


Democracy Depends on All of Us

ANNUAL REPORT 2022



**BRENNAN
CENTER**
FOR JUSTICE

 NYU | LAW

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Those who would
restrict claims of right
to the values of 1789 ...
turn a blind eye to
social progress.

JUSTICE WILLIAM J. BRENNAN JR.

Cover: Dan Bejar

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Dear Friends,

Last year the Brennan Center for Justice at NYU School of Law expanded its reach and strengthened its grasp — showing up as an incredibly effective machine for change in this critical moment for democracy.

At a time of unparalleled challenge, we are proud to report that Brennan Center has grown into a significant force in the nation's political and legal life. It has a distinct approach: Nonpartisan. Expert. Part think tank. Part legal advocacy group. Part communications hub. We are an engine of reform ideas — committed to winning, above all, in the court of public opinion.

The Center brings peerless institutional strength to this work. It has an annual budget of \$45 million, long-term financial stability through dedicated reserve funds, and a fundraising base of 39,000 generous supporters. Its staff of 158 includes attorneys, social scientists, writers, researchers, and many others — working together in person in offices in New York and Washington, DC, for maximum impact. In 2022 our social media campaigns drove more than 20 million impressions, and more than 5 million unique visitors came to our website. We work closely with students and faculty at NYU School of Law, one of the nation's top law schools.

This strength has allowed us to launch exciting new initiatives. Last July we introduced *Brennan en español*, which ensures that our work is an effective resource for Spanish-speaking allies and media. You can read more about this work in an interview with Editor in Chief Mireya Navarro, a Pulitzer Prize-winning former *New*

York Times journalist, on page 42. (And if you speak Spanish, flip this annual report over to read a special Spanish-language section.)

We launched *State Court Report*, an up-to-date resource (and soon to be a new website) for context and commentary about notable cases and legal trends. The development, we are sure, would be applauded by our namesake, Justice William J. Brennan Jr., who wrote: "State courts no less than federal are and ought to be the guardians of our liberties." For more on this work, turn to page 38.

Finally, audiences for all our work are finding us thanks to our content-rich newsletters *The Insider* and *The Briefing*, which now reach more than 300,000 readers. If you aren't getting them yet, we encourage you to take a look; you can sign up by scanning the QR code on page 23 with the camera on your phone.

As the board chairs for this extraordinary organization, we want to thank all of you for your passion for democracy, and for your commitment. Your support is more important than ever for the fights ahead. And on behalf of the board of the Brennan Center, we are so grateful we can count on you.



Robert A. Atkins
Co-chair, Board of Directors



Patricia Bauman
Co-chair, Board of Directors

Democracy Depends On All of Us

In 2022 election deniers lost.
But the fight goes on.



The forces of American democracy rallied in 2022. For years we saw the rising authoritarian movement, rooted in white supremacy, that threatened our basic values, part of a conflict with increasingly visible global dimensions. Now there is a democracy movement to counter it — strong, wide, diverse, and growing. In this great effort, the Brennan Center plays a singular, central role.

The year began with Congress considering voting rights legislation championed by the Brennan Center and heavily based on our ideas — legislation that came achingly close to enactment. We realized we needed to pivot to securing the 2022 election. We worked with election officials from both parties, bringing them together with law enforcement to make clear that intimidation of voters and election workers was flatly illegal.

In the end, despite the threats and lies, the 2022 election was calm, secure — *normal*. All the preparation worked. And every single one of the election deniers running in races to control election outcomes in key states lost their election. Voters made it clear: they cared about the health of our democracy.

Now we grapple with big challenges in 2023.

Start with the U.S. Supreme Court. Its new conservative supermajority produced the most extreme term in decades. Last year the Brennan Center co-led the friend-of-the-court campaign in *Moore v. Harper*, in which the Court may give state legislators exclusive power to set election rules — with no checks and balances from state courts, constitutions, governors, or voters. We expect the decision soon.

Illustration: Lucy Jones

We have launched a major new strategic initiative to respond to the Court's hard-right turn. We will enlist historians to critique extreme originalism. We will publish a major new book, *The Supermajority*, showing how this Court's extremism will provoke a massive backlash. We will press for term limits for justices and a Supreme Court code of ethics. We will forge arguments for an enduring, flexible Constitution. And we will expand our advocacy for democratic safeguards in state courts — for example, every state constitution but one has a stronger protection for the right to vote than the U.S. Constitution does. This summer we will launch an exciting new website, statecourtreport.org, to serve as an intellectual and strategic hub.

Another challenge: rising violence since the pandemic has created an opening for demagoguery and regressive policies. We fight fear with facts to show that public safety and fairness go hand in hand — with innovative policies that continue the path of bipartisan criminal justice reform.

We will address big money's growing role in American politics. A decade after *Citizens United*, the 100 biggest federal donors now give more than all small donors combined. A ray of hope: New York State just implemented its statewide small donor public financing system, the most important response to *Citizens United* anywhere in the country.

We will hold the flag high for the next wave of democracy reforms. Our country needs innovative approaches and fresh thinking. We will host a major symposium on new ways to ensure representation in a changing nation.

We will work to get ready for 2024. We know that antidemocracy forces will try to sabotage free and fair elections in that crucial year. Each year there are new and ominous ways to suppress the vote, such as Florida's election police squad, which has targeted voters of color who accidentally cast illegal ballots.

Above all, we will work to shape the next generation of reform ideas, in areas ranging from how the Department of Homeland Security protects against terrorism to new approaches to voting, such as ranked-choice voting.

In all this, the Brennan Center is a national leader. We take seriously our obligation to serve as a creative nexus for strategy, scholarship, legal advocacy, and public education. We know that much depends on our work.

Throughout most of the country's history, candidates have debated these very issues of power and voice. In the age of Trump, those who want to tear down our democracy had been on the march. Now citizens of all parties who want to defend our democracy and make it work for all are on the march too.

The fight for democracy, justice, and the Constitution are at the center of American politics, where they belong. In 2023 let's keep them there.

Michael Waldman
President and CEO



Protecting Democracy

Following a year of unprecedented attacks on our democratic system, pro-democracy forces rallied in 2022. The Brennan Center supplied the intellectual, tactical, and communications resources that fueled the movement.

Illustration by
Dan Bejar

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Fighting for Checks and Balances

How the Brennan Center undercut a bogus constitutional theory on its way to the Supreme Court.

BY BRIAN PALMER

Moore v. Harper, now before the U.S. Supreme Court, has been called “the most important case, since the founding, for American democracy.” The supermajority of conservative justices agreed to hear an outlandish claim: that the Constitution gives unlimited power over federal elections to state legislatures, without checks and balances from state constitutions and courts, governors, or voters. If wrongly decided, it could dwarf *Citizens United* and *Shelby County* in impact.

The Supreme Court has heard oral arguments but isn’t likely to announce its decision before June. Meanwhile, the Brennan Center’s tireless work on *Moore v. Harper* has given democracy its best chance of surviving this uniquely dangerous threat.

Backers call the idea the “independent state legislature theory.” Calling it a “theory” is generous. It has no support in history, courts have routinely rejected it, and it does not reflect how any state runs elections. The notion was first pushed hard by Donald Trump in his failing bid to overturn the election in 2020. Now the extreme idea has found at least four justices willing to hear the claim.

The facts: North Carolina is a politically divided

state. Voters split close to evenly every cycle. Yet the legislature created a congressional map likely to elect 11 Republicans and only 3 Democrats. The state supreme court ruled it was an unconstitutional partisan gerrymander. The legislature’s response: the court has no role and the North Carolina constitution does not apply. It asked the nation’s highest court to adopt the independent state legislature theory and bless that power grab.

Brennan Center experts saw this threat coming. We needed a sophisticated, wide-ranging campaign to help cut the idea off at the Supreme Court. We started with scholarship, with the center’s President Michael Waldman and Counsel Eliza Sweren-Becker publishing a law review article in 2019 setting out the

constitutional history. (James Madison demanded the relevant constitutional language precisely to prevent “abuses” by state legislatures, not to give them untrammelled power.) The Brennan Center convened a group of scholars for a public event in May 2022 to explain the problems associated with the independent state legislature theory. In June Thomas Wolf and Ethan Herenstein of the Democracy Program wrote a widely read explainer on the theory for the Brennan Center’s website. And, in anticipation of *Moore*, we held a closed-door strategy convening for civil rights advocates, legal scholars, and Supreme Court attorneys to game out the legal strategy for responding to any Supreme Court case that might emerge.

We wanted arguments to be powerful in court and in the court of public opinion. Which would resonate most deeply? Working with Benenson Strategy Group, a prominent polling firm, the Brennan Center decided on the message that would likely make the greatest impact: the crucial importance of checks and balances. Regardless of political affiliation, geography, or demographics, checks and balances are sacred to all Americans. They are key to understanding what makes our government stable. And the independent state legislature theory is, fundamentally, an attack on traditional checks and balances.

Armed with this simple yet effective message, the Brennan Center’s full advocacy machinery shifted into

Regardless of political affiliation, geography, or demographics, checks and balances are sacred to all Americans.

gear. We called together more than 100 organizations to coordinate messaging. Analyses on our website and in our newsletters garnered more than 150,000 views. Brennan Center experts wrote hundreds of posts about the case and the independent state legislature theory on our social media channels, generating nearly 20 million impressions and putting us among the top social media sources on the issue. Our experts also fanned out across traditional media, appearing on cable television news channels and writing op-eds in outlets from *Politico* to the *Los Angeles Times* to the *Atlantic*. In the week before the oral argument, 65 percent of news stories that used the phrase “independent state legislature theory” referenced the Brennan Center’s work.

The Brennan Center’s Communications and Strategy Department, in partnership with animator Patrick Smith, produced a two-minute video about the independent state legislature theory. It was viewed more than 1.6 million times across social media channels.

Sweren-Becker appeared before Congress in July 2022, telling legislators that the independent state legislature theory “would strip away checks and balances that have existed for centuries, empowering the most partisan actors in many states to manipulate election processes and outcomes.”

And our Democracy Program’s legal experts helped coordinate the amicus brief campaign to bring facts and arguments before the Court. Weighing in against the theory: all the top American historians, the co-founder of the Federalist Society, the GOP lawyer who argued *Bush v. Gore*, state election officials, the Dean of Georgetown Law School in his first-ever amicus brief before the Court, and dozens more. The organization of the chief justices of state supreme courts made clear the idea posed a threat to the rule of law.

The Brennan Center’s own brief to the Court showed that a bad ruling would sow chaos. Our researchers



documented hundreds of state constitutional provisions and state court decisions, along with thousands of delegations of authority, that could be undone — even the secret ballot in many states. As lawyer Neal Katyal, arguing for voters, told the justices, an unwise ruling would have a vast “blast radius.”

Our experts even unearthed a startling fact: the “original draft” of the Constitution relied on by the North Carolina legislature was a fake, decried by James Madison himself in 1818. Ethan Herenstein revealed this in *Politico*.

Through this vast body of communication, scholarship, and legal work, the Brennan Center removed the phony veneer of legitimacy from the independent state legislature theory and exposed it for what it is: a brazen attack on our system of checks and balances.

The message reached the Supreme Court. When

Moore v. Harper was argued on December 7, 2022, the phrase “checks and balances” was uttered in various forms 14 times, including once by Justice Elena Kagan herself, while protesters outside waved signs that read “I Love Checks and Balances.” Proponents of the independent state legislature theory were on the defensive from the moment they stood before the judges. Even multiple members of the conservative supermajority expressed significant skepticism about the theory, grounds for cautious optimism that we will defeat this radical theory. Whatever the decision, the Brennan Center’s work on the issue has laid the foundation for the next steps in defending our democracy. ■

Brian Palmer is the editorial director in the Department of Communications and Strategy.

Election Denial Is Down, but Not Out

Voters across the country rejected election deniers in 2022, but the threat such candidates pose ahead of 2024 persists.

BY KENDALL KARSON

Election deniers set out for a hostile takeover of our elections in 2022. Dozens of candidates who embraced Donald Trump's claim of a stolen 2020 election tried to gain control of elections in states across the country and to set the rules for 2024 and beyond. By November, in a major setback for the election denial movement, voters in the most crucial battleground states had roundly rejected these extreme candidates.

Our democracy weathered the storm, and a broad range of Brennan Center experts contributed. Our advocates, litigators, and communications specialists combated false claims, protected individuals' right to vote, and ensured that the votes were counted accurately. But this antidemocratic movement is far from fading out.

For years, the Brennan Center has made the point that American elections are secure and accurate. Our widely quoted research shows that you are more likely to be hit by lightning than commit voter fraud. Our books, studies, testimony, lawsuits, and more over two decades made clear that these false claims — often driven by not-very-subtle xenophobia and racism — are not an argument, but a lie. A Big Lie, in fact.

After the January 6 insurrection, Trump's effort seemed shambolic and discredited. But his allies sought to systematically remove the obstacles to stealing the next election. Thousands of election deniers were recruited to work the polls, forcing election officials to brace for disruptions from the inside. Vigilantes, some in tactical gear, patrolled and filmed voters outside ballot drop boxes to hunt for fraud. State lawmakers continued to concoct voting legislation that makes it harder to vote and easier to interfere in elections based on conspiracy theories about voter fraud. And many conspiracy theorists appeared poised to win state-level positions with sweeping authority over the same electoral process that they claimed, without evidence, was stolen in 2020. "Election denial showed up as orthodoxy through the entire election cycle," according to Ian Vandewalker, senior counsel for the Democracy Program, who tracked the influence of money in secretary of state races throughout the midterms.

Election Day was smooth and calm — *normal*, in fact. That was the product of massive work and preparation. As the *Washington Post* reported, citing our work, this was like the preparations that prevented the "Y2K" computer glitch from having catastrophic impact.

And voters showed they care. Across Arizona, Michigan, Nevada, Pennsylvania, and Wisconsin election denier candidates for governor, attorney general, and secretary of state — offices that play a significant role in administering our elections — suffered punishing losses. (In Georgia, Republican primary voters already had rejected an election denier seeking the secretary of state job.) The night wasn't a complete rout. Many members of Congress still spout false claims of fraud, for example. But the levers of power over elections remained in sounder hands.

Notably, election deniers running in secretary of state contests in battleground states fared worse than other statewide candidates from the same party. In Michigan, for example, the Trump-aligned candidate for governor garnered more than 100,000 votes than the prominent election-denier candidate for secretary of state, an office with outsize authority over the state's elections. "It seems like there's evidence that election denial itself turned off a number of voters, including swing voters and Republicans," explained Vandewalker.

Unlike 2020, when President Trump refused to accept his legitimate defeat, most of the vanquished election deniers quickly accepted their losses in 2022, particularly in states that tilted the outcome of the last presidential election. Adam Laxalt, a prominent Nevada Republican who ran for Senate in 2022 after previously calling the 2020 election "rigged," said in a concession statement, "I am confident that any challenge of this election would not alter the ultimate outcome." Even among those who did not immediately concede, most registered only muted complaints about the process. It felt, for the first time since the 2020 election, like we could all breathe a sigh of relief.

False fraud claims were discredited in 2022. Yet they still drive attempts to restrict voting rights across the country. We tracked legislation in nearly a dozen states that sought to restrict voting access, open the

Illustration: Dan Bejar



door to partisan interference in elections, or threaten the people and processes that make elections work. We partnered with the ACLU and the NAACP Legal Defense and Education Fund to expose the injustice of the flimsy prosecution of Floridians — most of them people of color — accused of illegally registering to vote and voting while ineligible. Last year also saw the first elections held under Texas's egregious voter suppression law, S.B. 1. Brennan Center researchers Kevin Morris and Coryn Grange found that Black, Latino, and Asian voters were at least 30 percent more likely than white voters to have their mail ballot application or their mail ballot rejected during the state's March primary. And despite high turnout in the 2022 midterms, we found that the racial turnout gap not only persisted but is, in fact, growing in a crucial state, Georgia, underscoring our concerns that these laws are chipping away at any progress toward an inclusive democracy.

The 2022 midterms were a success. Still, election denial isn't receding with the candidates that propped it up. Donald Trump is running again for the nation's highest office, and the movement that he fomented still has a home in some of our country's most extreme corners. The dangerous lies that feed it still pervade our elections.

The antidote to election denial isn't averting an election crisis with one smooth midterm election. The 2022 election was only a test run for 2024.

Blunting this multipronged assault on our democracy will continue to shape our work. Ensuring the future of fair and free elections requires national baseline standards, a robust restoration of the Voting Rights Act, and harnessing the energy of our multiracial movement once again to say: don't mess with our democracy. ■

Kendall Karson is a senior media strategist in the Department of Communications and Strategy.



Getting a Grip on Disinformation

Despite important wins for democracy in the midterms, we must prepare to fight future efforts to undermine our elections.

BY GABRIELLA SANCHEZ

After the 2020 election, millions of Americans embraced Trump's Big Lie. Voters' faith in the integrity of U.S. elections was at risk. In response, the Brennan Center devised a multi-pronged effort to counter the lies and help ensure that the midterms would take place safely and securely, using research, analysis, policy recommendations, and strategic partnerships to educate and reassure voters.

Brennan Center experts partnered with the German Marshall Fund of the United States to create the *Midterm Monitor*, an interactive tool that tracked trends in how misinformation spreads on social media platforms. Election deniers, it was found, rarely stray from their playbook: they recycle the same false claims about voting machines, voter fraud, and mail voting, and they point to breaking news events, such as temporary technical glitches on Election Day and normal delays in vote counting, as "evidence." The data also indicated that factual, timely information from trusted sources is a powerful antidote to misinformation. These findings allowed the Brennan Center and partner groups to refute conspiracy theories ahead of the midterms.

In August 2022, we published a report identifying gaps in the public's knowledge of elections and ways to prevent misinformation from filling the void, and we disseminated that work to our network of election officials and reporters. We also presented the report at a panel hosted by the National Association of Hispanic Journalists. A month before the election, we published a piece highlighting seven myths about voting and the facts that disprove them, which was shared by the *New York Times*, used by ally organizations, and translated into Spanish by Univision to reach Latino voters, who are at increased risk of being targeted by misinformation.

Illustration: Dan Bejar

Because of misinformation around the reliability of election security, 26 percent of people do not believe that their vote "really counts."

As Election Day approached, we worked to reach Latino voters in Arizona, Florida, Georgia, and Texas who had significant exposure to election misinformation. We analyzed social media posts to pinpoint the falsehoods these voters were encountering, then conducted English- and Spanish-language tests to determine what countermessaging would most effectively boost their trust in elections. Using micro-influencers — people with 20,000 to 100,000 followers on Instagram, Facebook, TikTok, and other platforms — we deployed a social media campaign to share our messaging.

The campaign generated more than 1.2 million impressions among our target audiences. Twenty-seven percent of those who saw the trusted messengers' content said they were more likely to vote, leading to at least a 5 percent increase in the number of people who voted compared with the number who originally planned to vote.

The success of these countermessaging campaigns is an encouraging sign in the fight against misinformation. Perhaps the most significant reason for optimism, however, is the outcome of the midterms. Elections unfolded safely, and the anticipated violence didn't materialize. Many election deniers were defeated, especially candidates seeking to control election administration.

Misinformation, however, is not going away. Artificial intelligence and machine learning will automate misinformation campaigns and make them more difficult to trace. The increasing precision of micro-targeted misinformation makes individuals more vulnerable to the tactic. Polling data shows conclusively that misinformation is eroding public trust in the system. Nearly two out of three Americans believe that U.S. democracy is at risk of failing. And because of misinformation around the reliability of election security, 26 percent of people do not believe that their vote "really counts."

Combating these trends is among the greatest challenges facing the Brennan Center, and our democratic system, in the coming years. Our work will focus on messaging to break through and counter proliferating falsehoods by using cutting-edge polling and social listening techniques. We will also continue to expose the role that social media platforms play and explain how imposing transparency rules on those platforms would shine a light on misinformation. ■

Gabriella Sanchez is a staff writer and editor in the Department of Communications and Strategy.



Defending Election Officials

The Brennan Center led an effort to ensure the safety of election officials before the 2022 midterms.

BY BRIAN PALMER

Securing the safety of local election officials was a top Brennan Center priority heading into the 2022 midterms. Civil servants who make our democracy function faced a deluge of specific and terrifying threats during the 2020 cycle, threats that in some cases forced them and their families from their homes. According to a 2021 Brennan Center survey, one-third of election officials feel unsafe because of their job, and nearly one-fifth list threats to their lives as a job-related concern.

The Brennan Center has amassed a squad of former top election officials to work to strengthen this community. Senior Counsel Elizabeth Howard was a top Virginia official. Natalie Tennant was secretary of state of West Virginia. The newest member of the team: Veronica DeGraffenreid, the former secretary of state of Pennsylvania and longtime director of elections for North Carolina. They work with Lawrence Norden, Senior Director of our Elections and Government Program.

In 2022 it turned out that election officials from both parties wanted one thing above all: help from law enforcement. The Brennan Center works with police

and prosecutors on criminal justice reform. Tapping our network, we reached out to work with the R Street Institute. Together we created a powerful new force: the Committee for Safe and Secure Elections.

“We brought together law enforcement and election officials from across the country to identify obstacles and solutions,” says Howard. “Bringing together a diverse group of community members enabled us to develop practical resources and guidance that helped communities keep both our election officials

and voters safe.” The election administrators, police, and prosecutors met at gatherings organized by the Brennan Center and partners at Microsoft in Orlando, Florida and Washington, D.C.

The committee drafted a five-step approach to safer elections, starting with a simple but critical step: connect. In many locales, simply identifying the correct point person in a community and meeting with other stakeholders in the area were important first actions. Once that connection was established, election officials and law enforcement were encouraged to share the jurisdiction’s experiences and important election administration information, agree on roles and responsibilities in the effort, plan a coordinated response to potential incidents, and practice that response. The committee also produced state-specific reference guides so that all parties understood the laws protecting election officials and voters.

Committee members fanned out across the media to spread this message, earning coverage in numerous national and local outlets from Reuters to *Good Morning America* to the trade magazine *Sheriff and Deputy*. Howard testified before the House Committee on Homeland Security about the danger that threats

“We brought together law enforcement and election officials from across the country to identify obstacles and solutions.”

Elizabeth Howard
Senior Counsel

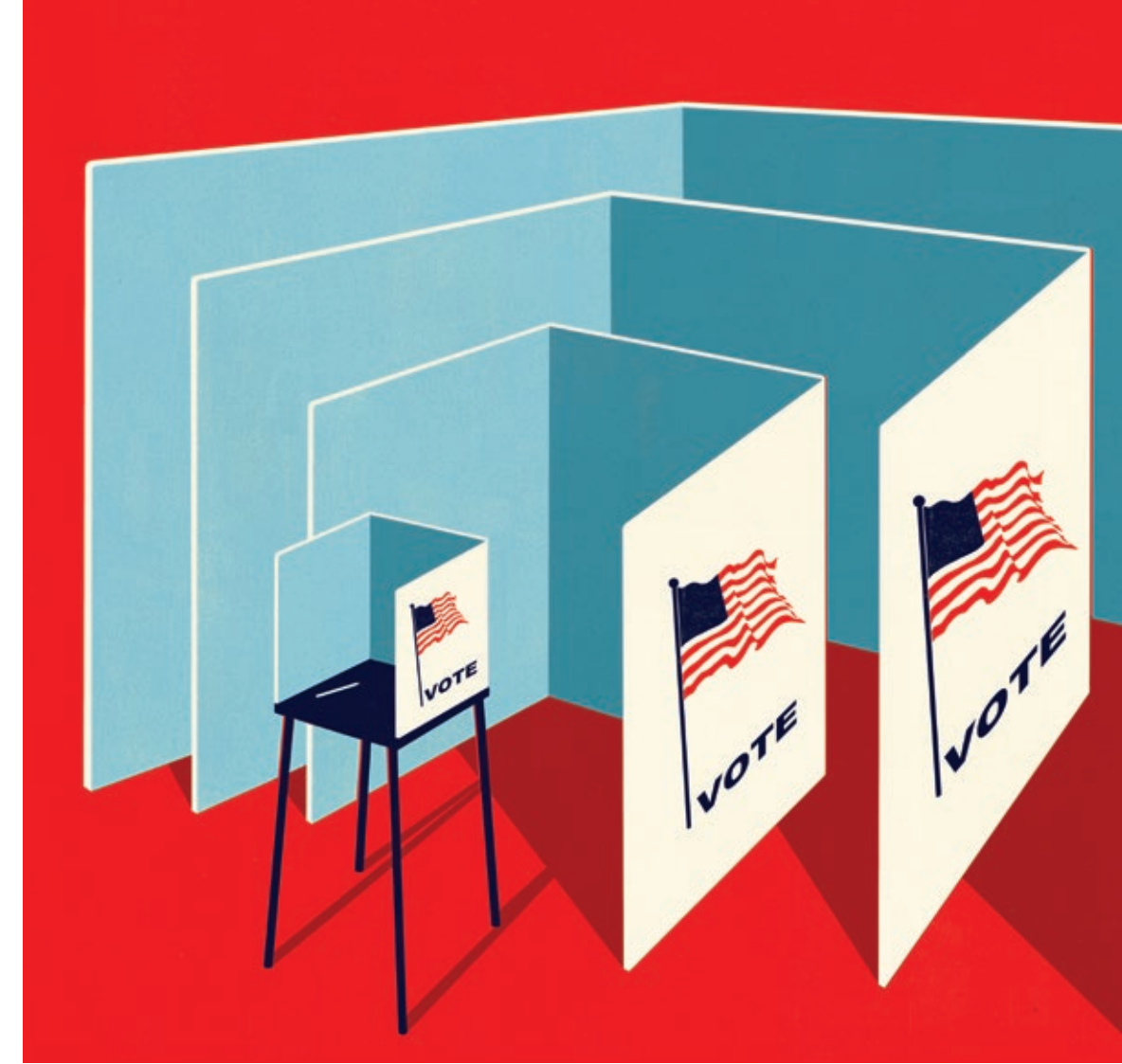


Illustration: Dan Bejar

against election officials pose to our democracy and the role of false information about election administration in fueling these threats.

The Brennan Center used its powerful platforms and public outreach to assure the public that our elections are free, fair, and secure, emphasizing the existing election security measures that research had demonstrated were most effective. Sheriffs Justin Smith of Larimer County, Colorado, and Peter J. Koutoujian from Middlesex, Massachusetts, co-authored an op-ed calling on their colleagues to join

the effort to keep our election officials and voters safe. These messages have been shown to be effective in swaying election skeptics: in October, the Brennan Center and R Street Institute released a poll, conducted by Benenson Strategy Group, showing that Republicans’ confidence in elections increased by 21 percentage points when they were informed about existing election safeguards. This messaging helped immunize citizens against disinformation and sapped support for violent responses to the 2022 election. ■

STEPS TO SAFER ELECTIONS

ONE
Connect
with law enforcement community

TWO
Share
the history of election worker intimidation

THREE
Agree
on roles and responsibilities in the effort

FOUR
Plan
a coordinated response to potential incidents

FIVE
Practice
that response

Rethinking DHS

The behemoth agency has long evaded comprehensive oversight. The Brennan Center is proposing actionable reforms.

BY ZACHARY LAUB

The creation of the Department of Homeland Security in 2002 marked the largest shakeup of the federal government in a half century. Reeling from the 9/11 attacks, Congress sought a new model for homeland security. It brought together nearly two dozen agencies under the new department, whose staff became the federal government's third largest. Once under the DHS umbrella, these agencies — which cover a range of activities from immigration and customs enforcement to intelligence gathering to protecting federal government facilities — were meant to prioritize and contribute to counterterrorism efforts.

That reorganization, however, has carried significant costs. In 2022, the 20th anniversary of DHS's founding, the Brennan Center's Liberty and National Security Program launched a series of reports taking a holistic approach to DHS reform. That series, which will conclude in 2023, identifies the structural causes of recurrent counterterrorism abuses and proposes innovative solutions. "Two decades after its creation, it is time to take stock of how DHS has executed its

counterterrorism mission so we can build mechanisms for better protecting Americans' rights and to ensure that the department's broad ranging efforts are actually successful," says Faiza Patel, senior director of the Liberty and National Security Program.

Since the department's establishment, for example, abuses of civil rights and civil liberties have become endemic. Muslim Americans are consistently singled out, including being pulled aside when entering the U.S. and questioned about their religious beliefs and practices. More recently, DHS has turned its focus to Black Lives Matter protesters, environmental activists,

and others exercising their First Amendment right to dissent. In 2020, as racial justice protests erupted across the country, the department used its counterterrorism authorities to gather intelligence about protesters, supporting the Trump administration's efforts to portray protests as the work of mysterious anti-fascists.

Many counterterrorism initiatives have been based on dubious science. So-called "countering violent extremism" programs purport to identify people prone to engaging in terrorist acts and refer them for intervention. But the criteria relied upon to suggest terrorist proclivities — such as feelings of alienation

and discrimination — are common experiences rather than credible indicators of criminal activity. The Biden administration has acknowledged the biases inherent in the programs, yet rather than dismantle them, the administration rebranded and expanded them. Costly initiatives to track and assess travelers have likewise been undertaken, even though DHS's own inspector general found that they were of questionable utility.

Moreover, through its multitude of activities and programs — both at the border and inside the United States — DHS has accumulated a vast store of data about Americans not suspected of criminal activity.

Little is understood about how this information is used or how it is protected from hostile governments.

Oversight of DHS is piecemeal and inadequate. Congress has endeavored to circumscribe the agency's extensive and wide-ranging authorities by establishing internal watchdog offices to protect Americans' privacy, civil rights, and civil liberties. Alongside the department's general counsel and inspector general, these offices have occasionally curbed some of DHS's abuses, but they have lacked the type of leadership support needed to rein in broader violations. In Congress, meanwhile, more than 100 committees →

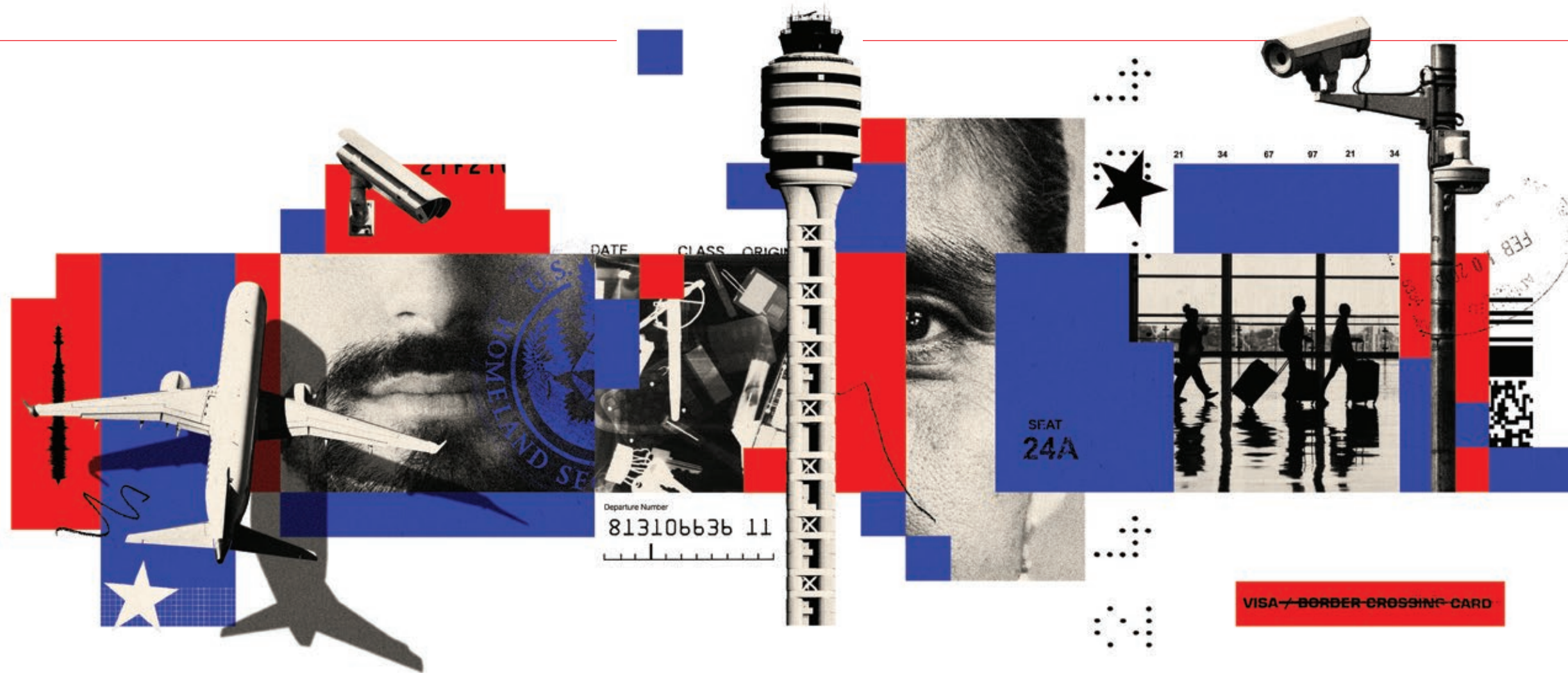


Illustration: Cristiana Couceiro

Through its multitude of activities and programs — both at the border and inside the U.S. — DHS has accumulated a vast store of data about Americans not suspected of criminal activity.

and subcommittees claim jurisdiction over some of DHS’s activities.

The Brennan Center’s reports on the agency draw on long-standing research that the Liberty and National Security Program has carried out on countering violent extremism initiatives and social media monitoring, as well as the Trump administration’s ban on travelers from predominantly Muslim countries and the administration’s so-called extreme vetting initiative.

The program’s April 2022 report, *A Course Correction for Homeland Security*, unpacked the broad authorities, weak safeguards, and insufficient oversight that have enabled these abuses. Subsequent reports proposed innovative solutions. While some of the program’s recommendations depend on legislative action, most can be adopted at the DHS secretary’s discretion, meaning that significant reform is possible even if Congress does not act. These solutions would apply to the department’s activities across the board, raising standards not just in its sprawling counterterrorism mandate but in immigration enforcement as well.

In September the center proposed a model nondiscrimination policy, which would close gaps exploited by travel and immigration agencies. In December it proposed a rigorous oversight regime for DHS cooperation with state and local law enforcement agencies through information-sharing hubs called fusion centers. Future installments in the series will tackle domestic intelligence collection, the use of vast troves

of personal information stored in DHS databases, and the pervasive lack of oversight.

The series is already bearing fruit in Washington. The Biden administration’s order to federal agencies to embed equity and racial justice in their practice prompted the Departments of Justice and Homeland Security to revise their law enforcement policies. Amid their review, Sen. Ben Cardin and a dozen of his colleagues wrote a letter to Secretary of Homeland Security Alejandro Mayorkas and Attorney General Merrick Garland urging them to incorporate our recommendations for nondiscrimination policy. Senior DHS officials, meanwhile, have invited Brennan Center experts to headquarters for substantive policy discussions.

Meanwhile, our experts are getting the word out to the public. Faiza Patel and Rachel Levinson-Waldman have published op-eds in the *Hill*. Michael German has appeared on the *Lawfare Podcast* and *PBS NewsHour* to discuss the privacy, civil rights, and civil liberties perils inherent in fusion centers, a topic that *Reason* magazine also covered in depth following our report. The series will culminate in a symposium in late 2023. Bringing together civil society leaders, academics, and homeland security experts and staffers, the event will cultivate a coalition to press for reform from both outside and inside government. ■

Zachary Laub is the managing editor for publications in the Department of Communications and Strategy.

“It is time to take stock of how DHS has executed its counterterrosim mission ...”

Faiza Patel
Senior Director,
Liberty and National Security

Quantifying Crime

A Brennan Center expert helps Americans understand the statistics.

BY BRIAN PALMER

Murders went up a startling 29 percent in 2020, according to FBI data published in 2021. The news inundated headlines, and politicians turned demagogic, running campaigns meant to exploit the race-based fears of some voters. In the weeks before the 2022 midterm elections, one-quarter of Republican ad spending focused on crime.

Previous data had shown years of steady declines in the murder rate, so — while politicians made hay — puzzled policy experts turned to the data looking for root causes. And they anxiously awaited the figures for 2021 to determine whether we were experiencing a sustained increase in homicides or had merely seen a one-year spike.

But there was a problem. The FBI abruptly changed the methodology behind its data collection at arguably the worst possible moment. The 2021 switch complicated this critical research and led some to question the trustworthiness of even the most basic numbers.

Researchers rely on several sources of information when analyzing crime data, and among the most important is the FBI’s compilation *Crime in the United States*. The annual report goes back to the mid-1990s and has long been considered an invaluable resource for identifying trends and matching them to shifts in policy and in our society at large.

When the FBI made its 2021 data collection change, it dropped one of the two systems used to aggregate

violent crime statistics, leaving many major cities unable to report data. As a result, the most recent edition of *Crime in the United States* used statistical estimates of crime for jurisdictions representing more than half of the U.S. population, rather than relying on actual criminal records.

Experts at the Brennan Center for Justice — led by Ames Grawert, senior counsel and John L. Neu Justice Counsel in the organization’s Justice program — were key national voices in explaining the situation, talking to reporters and using the Brennan Center’s website, where Grawert’s explainer on the topic garnered 150,000 views.

In fact, as Grawert explained, the FBI had planned for this methodological shift years in advance, long

before the 2020 spike in murders. And the bureau’s 2021 murder estimates — which show a far smaller increase than in 2020 — appear roughly accurate, since alternative sources of crime data reflect trends similar to what the FBI reported.

Still, there are important lessons to be taken from this incident. First, national data on crime is generally inadequate and must be improved. We have little information about misdemeanors committed in the United States, or the number of people who have been in prison at some time in their life. Sociological data about imprisoned people and what their lives are like depends on information from a single official publication, the *Survey of Prison Inmates*, which has skipped entire decades of data. To have any hope of reducing unnecessary incarceration and improving public confidence, U.S. officials must first understand the system itself. That means being more consistent and careful in their data collection.

“Too much research has to be done by inference rather than hard data,” observes Grawert. “You need reliable numbers before you can advocate for change.” Look for major research from the Brennan Center’s Justice team to help fill the data gap in 2023. ■

“Too much research has to be done by inference rather than hard data. You need reliable numbers before you can advocate for change.”

Ames Grawert
Senior Counsel



Getting the Word Out

In 2022 the Brennan Center countered waves of election disinformation with cutting-edge research, strategic expansion of our digital platforms, and media outreach.

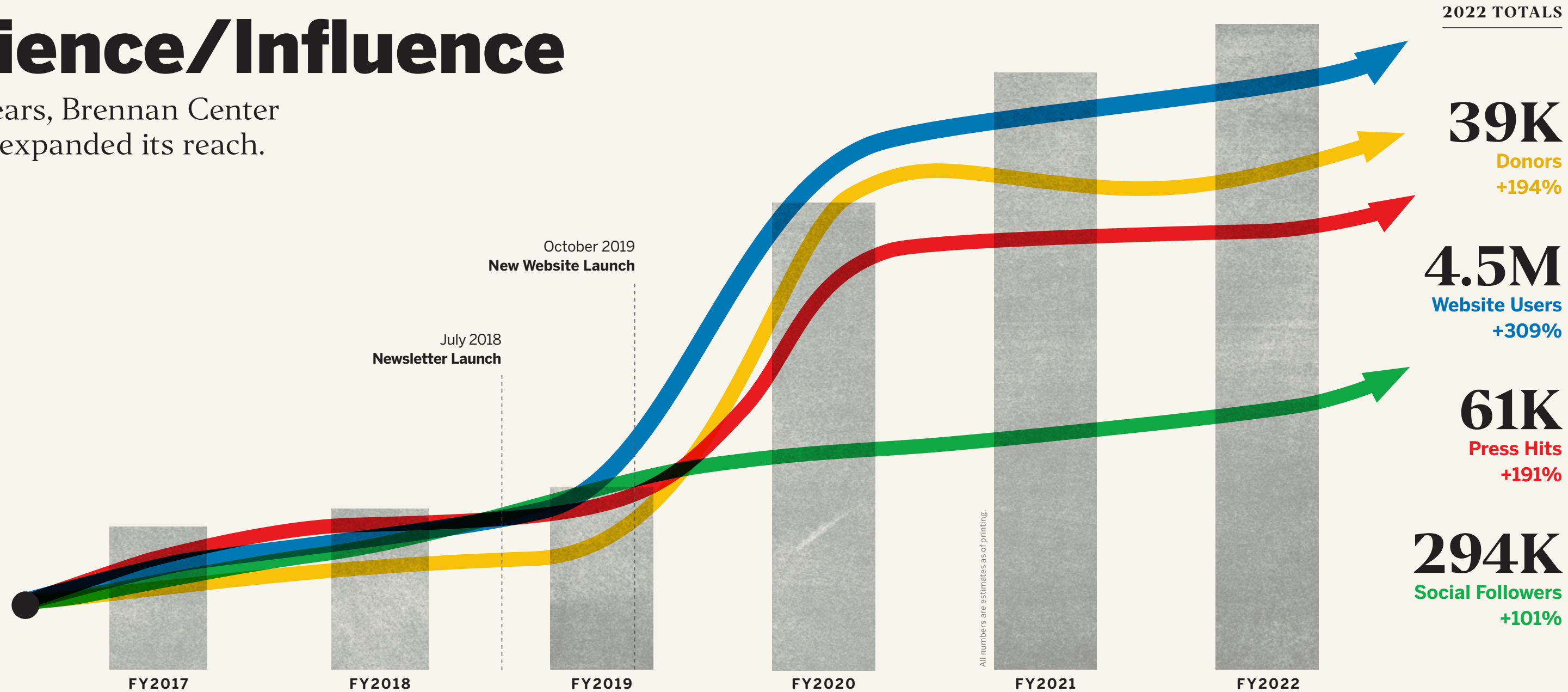
Audience/Influence **22** / Media **26**
Expert Testimony **28** / Events **30**

Audience/Influence

In just 5 years, Brennan Center has vastly expanded its reach.

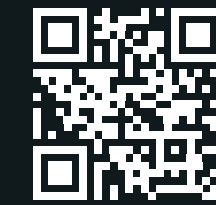
2017 BASELINE

- 13K Donors
- 1.1M Website Users
- 22K Press Hits
- 136K Social Followers



We've Got Mail

In 2019, the Brennan Center launched a digital newsletter strategy aimed at bringing new audiences to our website and delivering critical thinking on our core issues. From just over 6,000 subscribers in our first year, we now reach over 300,000.

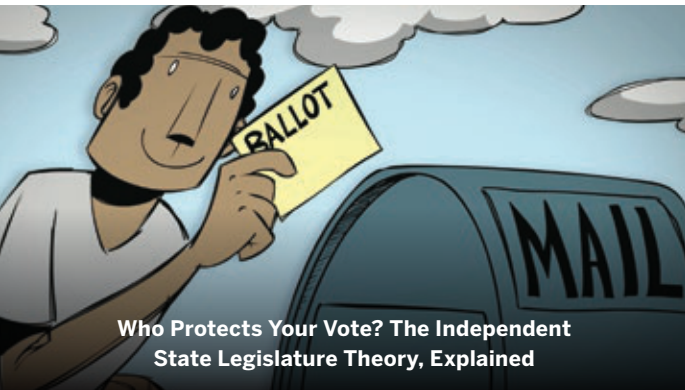
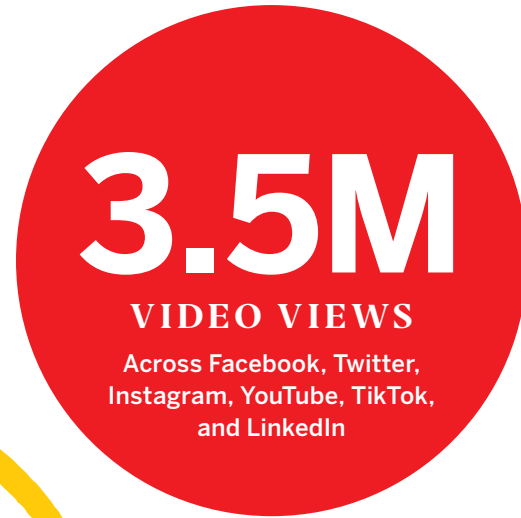


SUBSCRIBE



Motion for Change

Millions of Americans watched Brennan Center videos in 2022, three of which won Anthem awards for excellence in mission-driven communications.



COUNTERING DISINFORMATION IN THE MIDTERMS

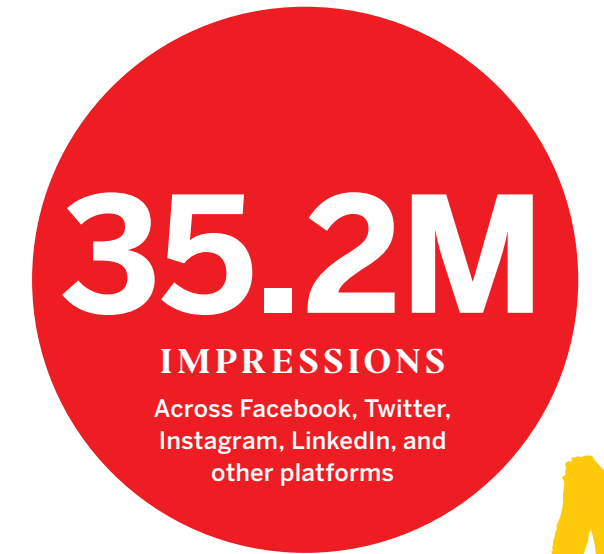
We worked with local influencers to mount a voter education campaign in key battleground states. Among those who saw the content:

36%
were reminded to turn in their ballots

27%
were more likely to vote

>5%
increase in voter turnout*

*compared with the number who originally planned to vote



We Diversified Our Community

To hedge against turbulence at Twitter, the Brennan Center launched new platforms on Mastodon, Substack, and TikTok and expanded video content across existing social channels.



MARCH 4

Asia Johnson speaks with NPR's *Morning Edition* about billing inmates for room and board in prisons and jails:

"It's a disruption to their ability to pay their bills, child care, their job."



APRIL 19

Hernandez Stroud talks about Rikers Island on Spectrum News NY 1.

APRIL 27

Elizabeth Goitein discusses emergency powers on MSNBC's *Rachel Maddow Show*.



MAY 2

Larry Norden talks about election workers during the 2020 election on NPR's *All Things Considered*:

"[People] running our elections refused to bend to the lie, and told the truth."



MAY 15

Faiza Patel discusses the Buffalo mass shooting on MSNBC's *Yasmin Vossoughian Reports*:

"It's difficult to distinguish between people who are just talking and people who have an actual plan to carry out violence."



JUNE 9

Michael Li talks about redistricting on CNBC's *News with Shepard Smith*.

JUNE 14

Gowri Ramachandran talks with ABC about Trump allies emphasizing false claims that the last election was stolen in efforts to recruit poll watchers.



JUNE 17

Dan Weiner joins *ABC News Live* to discuss the third Jan. 6 committee hearing:

"[Congress must] deal with the immediate threat of election sabotage that continues across the country."



JUNE 30

Yuri Rudensky discusses SCOTUS reinstating Louisiana's racially gerrymandered congressional map on Cheddar News.



SEPTEMBER 24

Lauren-Brooke Eisen talks about deaths in prisons and jails on MSNBC's *Cross Connection*:

"It's important to collect clear and accurate data to reduce deaths in custody in the future."

SEPTEMBER 28

Kelly Percival explains census concerns on WORT-FM 89.9:

"Decade after decade, [the census] has failed to count communities of color."



OCTOBER 4

Ian Vandewalker discusses the midterms on *USA Today*:

"Democracy depends on the losing side accepting the result."



OCTOBER 12

Eric Ruben discusses the Second Amendment and the New York gun law court challenge on Spectrum News NY1.



OCTOBER 25

Derek Tisler discusses threats to election officials with WXYZ ABC Detroit:

"The biggest concern that we have, and that we have had since 2020, is just misinformation about the voting process."

OCTOBER 26

Sean Morales-Doyle talks with NPR's Juana Summers about voting this election cycle:

"Voter intimidation is illegal. It is a crime under federal law. It is a crime under state law."



NOVEMBER 5

Douglas Keith talks about money pouring into state judicial campaigns this year on NPR's *Weekend Edition*.



NOVEMBER 8

Wendy Weiser discusses election security on *ABC News Live*:

"Multiple safeguards [are] in place, ... layer upon layer of checks and balances."



NOVEMBER 22

Chisun Lee discusses New York's public campaign financing program with Spectrum News NY1.

NOVEMBER 22

Patrick Berry talks to WGCU about Florida prosecuting people with past criminal convictions for allegedly voting while ineligible in 2020:

The state has made it "nearly impossible" for anyone to figure out who's eligible to vote.



DECEMBER 3

Joanna Zdanys discusses New York State's new public campaign finance program on Spectrum News NY1.



DECEMBER 3

Tom Wolf discusses the independent state legislature theory on MSNBC's *Ayman*:

"[We'd be] moving from a system where everyone participates ... [to one] where legislators tell us how things are gonna be and that's the end of the road."



DECEMBER 3

Jasleen Singh talks with NBC News about new voting bills pre-filed in Texas.

DECEMBER 6

Michael Waldman is interviewed on *CNN Newsroom* about the Supreme Court case on the independent state legislature theory.



DECEMBER 24

Alicia Bannon talks about the power of state courts on MSNBC's *Mehdi Hasan Show*:

"State supreme courts are the sleeper seats of power. 95% of all cases are filed in state courts."



THE BRENNAN CENTER WAS FEATURED

OR CITED IN 273 NEWS BROADCASTS

Expert Testimony

Brennan Center advocates shared their expertise with policymakers around the country, at both the federal and the state level.



FEBRUARY 15

Gowri Ramachandran

On the risks posed by threats to election officials*



JUNE 22

Edgardo Cortés

Advocating for the upgrading and securing of voting infrastructure



JULY 20

Elizabeth Howard

Advocating for protections for election officials



AUGUST 10

Eliza Sweren-Becker

On the dangers of the independent state legislature theory



SEPTEMBER 20

Eliza Sweren-Becker

On the dangers of the independent state legislature theory

DECEMBER 8

Caroline Fredrickson

Advocating for the bolstering of the Courthouse Ethics and Transparency Act

JANUARY 20

Gowri Ramachandran

On threats to election infrastructure and voter confidence

FEBRUARY 4

Daniel Weiner

Advocating for maintaining and expanding campaign disclosure laws*



JUNE 7

Michael German

On the rise of white supremacist and far-right domestic terrorism



JULY 19

Daniel Weiner

In support of the DISCLOSE Act

JULY 19

Elizabeth Goitein

In support of the Fourth Amendment Is Not for Sale Act



SEPTEMBER 6

Gowri Ramachandran

On threats to election infrastructure and voter confidence

JULY 22

Elizabeth Howard

Advocating for protections for election officials



NOVEMBER 22

Ames Grawert

In support of the Clean Slate Act

* Testimony before state legislatures

Brennan Center Live

We hosted 29 thought-provoking events in 2022.



“If people don’t believe that our system works, then we’ve lost it.”

SEAN MORALES-DOYLE

Democracy on the Brink/ Nuestra democracia en la cuerda floja

Clockwise from left: **Carolina Peguero**, reporter/anchor *Noticias 24/7*; **Roberta Braga**, Director of Counter-disinformation Strategies, Equis Institute; **Esosa Osa**, Deputy Executive Director, Fair Fight Action; Moderator: **Sean Morales-Doyle**, Director, Brennan Center Voting Rights Program

The Midterms: What Happened — and Where Do We Go from Here?

From left: **David Plouffe**, former Senior Adviser to President Obama, *New York Times* bestselling author, political analyst for NBC News, and host of the *Campaign HQ* podcast; **Rob Jesmer**, Managing Partner of FP1 Strategies; **Elise Jordan**, political analyst and writer, MSNBC/NBC News; **Sewell Chan**, Editor in Chief of the *Texas Tribune*



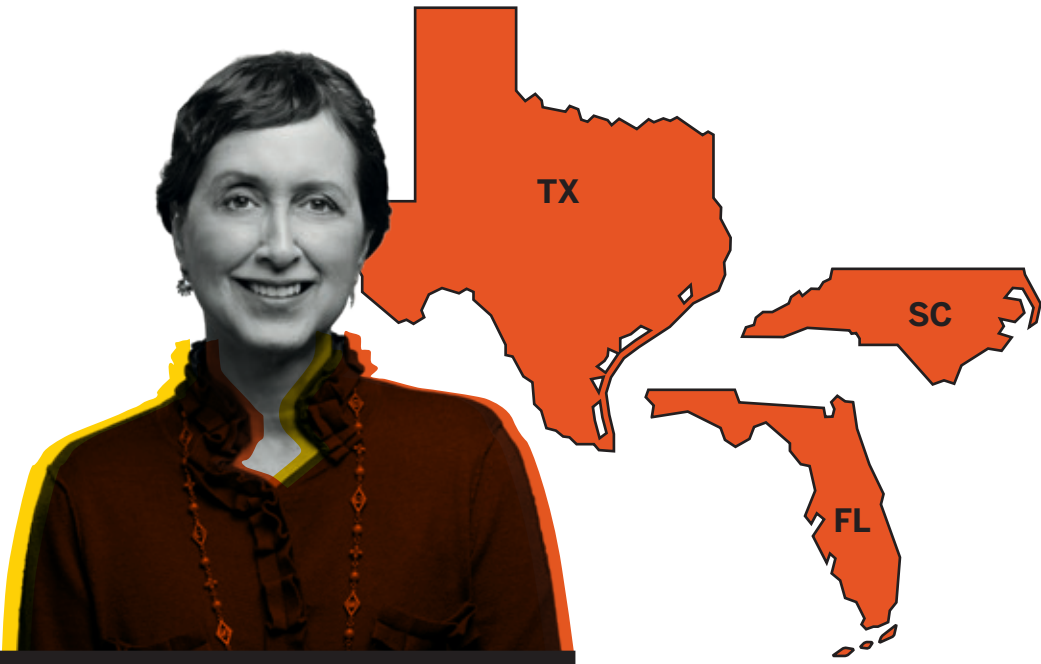
“There were some big things going on. Inflation ... democracy at risk ... abortion ... This was a big election and voters behaved differently than we might be accustomed to.”

DAVID PLOUFFE



The Fight to Vote: A Conversation with Michael Waldman and Melissa Murray

Moderator: **Melissa Murray** (left), Frederick I. and Grace Stokes Professor of Law, NYU School of Law; **Michael Waldman** (right), President, Brennan Center for Justice; author of *The Fight to Vote* and *The Second Amendment: A Biography*



Drawing the Line: How Redistricting Impacts Latino Communities in Florida

Produced in partnership with Hispanic Federation

Moderator: **Mireya Navarro** (pictured), Editor in Chief, *Brennan en español*; **Laudi Campo**, Florida Director, Hispanic Federation; **Miranda Galindo**, Senior Counsel, LatinoJustice, PRLDEF; **Thomas Kennedy**, Policy Adviser, Florida Immigrant Coalition; **Jackie Colón**, Southeast Regional Director, NALEO Educational Fund; **Joel Flores**, Mayor, City of Greenacres

“Don’t take democracy for granted. It can happen here.”

JONATHAN MARTIN

How January 6 Is Poisoning Politics

Jonathan Martin (left), Senior Political Correspondent, *New York Times*; political analyst, CNN; coauthor, *New York Times* bestseller *This Will Not Pass: Trump, Biden and the Battle for America’s Future*; Moderator: **Betsy Fischer Martin**, Executive Director, Women & Politics Institute at American University, former Executive Producer, *Meet the Press with Tim Russert*



“This isn’t the end of the story of the Trump Republican Party. I don’t know where in that story we are. I don’t think we’re at the beginning anymore. But we might be just at the middle of that story, not the end.”

JEREMY PETERS

The Party of Trump

Jeremy Peters (left) reporter, *New York Times*; author, *Insurgency: How Republicans Lost Their Party and Got Everything They Ever Wanted*; Moderator: **Yamiche Alcindor**, anchor and moderator, *Washington Week*; White House Correspondent, *PBS NewsHour* (2018–2021); Washington Correspondent, NBC News (2022)



The Independent State Legislature Theory’s Radical Threat to Democracy

From left: **Kate Shaw**, Professor of Law and Codirector of Floersheimer Center for Constitutional Democracy, Cardozo Law; **Vikram D. Amar**, Dean and Iwan Foundation Professor of Law, University of Illinois School of Law; **Carolyn Shapiro**, Professor and Codirector of the Institute on the Supreme Court of the United States, Chicago-Kent College of Law, Illinois Tech; Moderator: **Wilfred U. Codrington III**, Fellow, Brennan Center; Assistant Professor of Law, Brooklyn Law School; **Leah Litman**, Assistant Professor of Law, Michigan Law

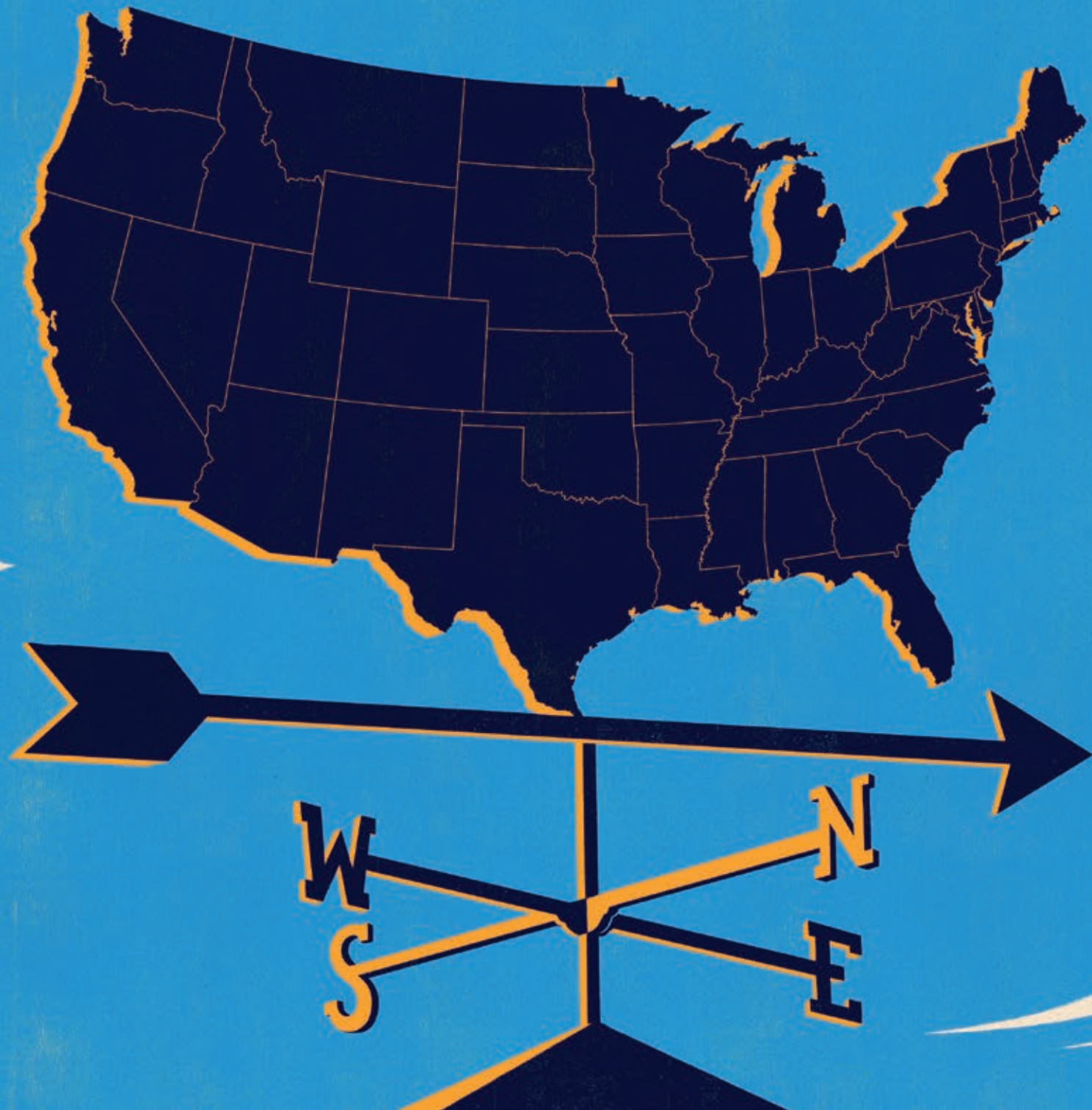


The Work Ahead

Serious challenges remain for our democracy, from a broken campaign finance system to a regressive and activist Supreme Court. The Brennan Center has big ideas to meet the moment.

The Supermajority 36 / *State Court Report* 38
Big Money in Politics 40 / *Brennan en español* 42

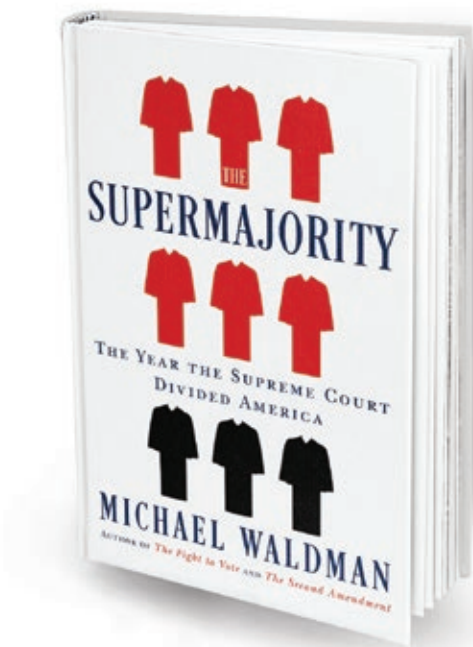
Illustration by
Dan Bejar



A Regressive Court Turns Activist

Michael Waldman talks about his new book, *The Supermajority*.

In his new book, *The Supermajority*, publishing in June, Brennan Center President and CEO Michael Waldman recounts the earthshaking 2022 Supreme Court term, comparing it with previous eras of high court activism. Waldman provides his perspectives on the book and the Supreme Court.



The Supreme Court has long been conservative. Why did you decide to write this book now?

The conservative legal movement has been building toward this moment for decades: a new 6–3 conservative supermajority. The numbers matter. A single swing justice will no longer pull the Supreme Court toward a more moderate approach. We saw the results clearly: three decades of social change — on abortion, guns, and environmental regulation — crammed into three days in June 2022. This is a big moment for the country. It’s a big moment for the Brennan Center too, as we assess our own future work and strategy.

The book begins with a history of the Supreme Court, focusing on major inflection points — *Marbury v. Madison*, *Dred Scott*, the *Lochner* era, and the Warren Court. Why are these critical to understanding the current Court?

The U.S. Supreme Court is a singular institution. In no other democracy do nine unelected officials have so much power.

Over the country’s history, the Supreme Court has largely aligned with the country’s political consensus. But on a few occasions, it has been extreme, partisan, or very activist. When that happens, there is a massive backlash and sometimes even a political realignment. *Dred Scott*, which legalized slavery throughout the country, propelled the rise of the Republican Party

and helped ignite the Civil War. In the *Lochner* era, the Court responded to social and economic upheaval by blocking progressive government regulation. It led to decades of backlash, including Theodore Roosevelt’s 1912 third-party run for president, and of course the conflict between his cousin Franklin and the “Nine Old Men.” We are living through the backlash against the Warren Court to this very day. There is a regular cycle of Supreme Court overreach and backlash. So it’s entirely appropriate for Americans to debate the Supreme Court in explicitly political terms, as we have all through our history.

The Warren Court was an outlier — activist Supreme Courts are usually regressive — and it’s important for progressives to shed their illusions.

You write that Chief Justice John Roberts is canny about protecting the Court’s legitimacy, except when it comes to one issue.

On the law of democracy, Roberts has moved the Court rightward with the activist enthusiasm of a starched-collar justice in the *Lochner* era. The eviscerating of the Voting Rights Act in *Shelby County*. The refusal to police partisan gerrymandering in *Rucho*. The convulsive changes to our campaign finance system in *Citizens United*. All of them created the deeply unfair political system we have right now.

Roberts often said, “If it is not necessary to decide more to dispose of a case, then it is necessary not to decide more.” But Roberts’s record on democracy issues hardly reflects that philosophy of judicial minimalism.

You describe this past Court term as radical.

These were landmark decisions. The *Dobbs* ruling on abortion overturned a fundamental right for the first time in the country’s history, a protection for women over a half century. It puts at risk all other privacy rights as well. *Bruen* ruled that gun safety laws were

unconstitutional unless they followed “history and tradition,” meaning literally that any modern gun regulation must have a direct analog in the colonial era. Public safety concerns play no role. Hundreds of gun laws are now at risk. *West Virginia v. EPA* blocked a major climate change regulation and articulated a new “major questions” rule — if a topic is urgent and big enough, a regulatory agency is barred from acting, even if basic laws passed by Congress authorize action. It is the first major rollback of the regulatory state in decades.

This Court is formally the Roberts Court, but you say it is ideologically the Thomas Court. In what way do the Court’s recent opinions reflect the jurisprudence of Justice Clarence Thomas?

Thomas has long argued that stare decisis, respect for precedent, is just “a mantra when we don’t want to think.” He does his own analysis of original intent and ignores everything that has happened since then. This jurisprudence used to be on the Court’s fringe. Antonin Scalia was asked what the difference was between himself and Thomas. He answered, “I’m an originalist and a textualist, not a nut.” Now Thomas is the senior justice among the most conservative members, assigning opinions when Roberts

is not in the majority. His extreme brand of originalism has become dominant.

Is there a way to stop the originalist movement, other than via a major change in the Court’s composition?

The Supreme Court did not rely on originalism through most of its history. The past was important, but the justices focused on what the country needed and how it had evolved. The rise of originalism as the dominant approach really only happened in this past year.

There are only four major originalist decisions. The first, *Dred Scott*, was so notorious that it discredited originalism for a long time. *Heller* in 2008, establishing a Second Amendment right to private gun ownership. *Dobbs* and *Bruen* last year. That’s it! There is no history and tradition of relying only on history and tradition to make constitutional decisions.

But you can’t beat something with nothing. Unfortunately, opponents of originalism have fallen silent. It’s painful to watch confirmation hearings in which even progressive judicial nominees pledge to follow regressive originalist dogma. We need to articulate a vision for an enduring Constitution that is adaptable to a changing country, one that looks forward, not backward. ■

“In no other democracy do nine unelected officials have so much power.”

Michael Waldman
President and CEO

Introducing State Court Report

The Brennan Center launches a new forum to recognize the diversity of U.S. law.

State constitutions are underappreciated venues for vindicating rights, especially as the U.S. Supreme Court has limited many federal constitutional protections. Alicia Bannon, director of the Judiciary Program, discusses the Brennan Center’s *State Court Report*, a new hub for news, analysis, and commentary on constitutional developments in state courts.

You’ve described state constitutions as sites of innovation and expansion. How can state constitutions offer greater rights protections than the federal constitution?

State courts are the powerhouses of the judiciary: 95 percent of cases are filed there. State supreme courts usually have the final word in interpreting state laws and state constitutions. They have a huge impact on people’s lives. And yet they often fly under the radar. There isn’t a place that provides a one-stop shop for looking at how state courts are interpreting their constitutions and what the legal trends are. That’s what we decided to create with *State Court Report*.

When most people think about the Constitution or the courts, they’re thinking about the Supreme Court. But when it comes to rights protection, the federal constitution is a floor, not a ceiling. State

courts and state constitutions can go further than the federal constitution.

For example, a few years ago the Supreme Court slammed the courthouse door with respect to addressing partisan gerrymandering, saying it can’t be challenged under the federal constitution. Many state courts stepped up and found that their state constitutions did address partisan redistricting. Since the Supreme Court’s ruling, state courts in

Alaska, Maryland, New York, North Carolina, Ohio, and Pennsylvania have struck down gerrymandered maps.

Reproductive rights loom large in this conversation. In *Dobbs v. Jackson*, the Supreme Court ruled that there is no federally protected right to abortion. But that does not mean there can be no state-level constitutional protections for reproductive rights. In January of this year, the South Carolina Supreme Court struck down the state’s six-week abortion ban, citing the right to privacy in its state constitution. Even pre-*Dobbs*, several state supreme courts identified abortion rights within their state constitutions, separate from federal constitutional protections.

Have state court decisions influenced the development of federal constitutional rights?

There’s a gravitational pull in both directions between state courts and federal courts. The most famous example is marriage equality. Courts in states such as Massachusetts and Iowa interpreted their con-

stitutions to provide a right to same-sex marriage. These decisions were significant in shifting not just the public debate, but also how scholars and eventually judges in the federal courts thought about this issue. State courts can have an important impact both through how they interpret particular substantive rights and through their approach to constitutional interpretation writ large.

What are some of the limitations of state courts in protecting rights?

State courts and state constitutions aren’t a substitute for robust federal protection of civil rights and democratic values. Unfortunately, the current conservative supermajority on the Supreme Court is not willing to play that role, instead embracing a narrow kind of originalism that precludes protection of many rights.

What we’re left with are state courts. Some have embraced independent interpretations of their state constitutions, rooted in their states’ unique histories; others have less of that tradition. For example, while the South Carolina Supreme Court struck down its state’s abortion ban on the basis of a state right to privacy, the Idaho Supreme Court ruled that there was no fundamental right to abortion in its state constitution, hewing closely to the reasoning in *Dobbs*. Our fundamental rights are going to depend on geography in a way that they haven’t and shouldn’t.

Is this renewed spotlight on state courts politicizing state court benches?

High court judges are elected in 38 states. The new focus on state courts and their importance means more special-interest attention in those elections. We’ve also seen troubling legislative assaults on and retaliation against state courts: efforts to change a state’s system of judicial selection, impeachment efforts against judges, and measures targeting judi-

cial budgets in response to unpopular decisions. We’ll watch closely to see whether those trends accelerate as state courts become more enmeshed in hot-button issues.

It’s critically important for members of the public to learn about their state courts and to insist on fair, impartial, diverse, and independent benches. All too often, because state courts don’t make headlines, people fail to push back when their rights are under assault. When people recognize the importance of state courts, they can mitigate legislative assaults on the courts or special-interest influence in judicial elections.

You mentioned diversity. Do state courts have a representation problem?

Across the country, state supreme courts do not reflect the diversity of the communities they serve. We collected data on diversity on state supreme courts in May 2022. Twenty-five states had no justices of color on their high court benches, including 12 states where people of color make up at least 20 percent of the population. Men held 59 percent of state supreme court seats despite being only half of the population. There was also a lack of professional diversity. We found that 39 percent of sitting justices were former prosecutors, whereas only 7 percent were former public defenders.

Judges with a narrow set of life experiences are making hugely consequential decisions that affect the lives of millions of people. That lack of diversity is harmful for public confidence in the court — people who are being impacted should trust that the justices understand them and the consequences of their rulings. It’s also harmful for the development of the law. We benefit from judges with diverse life experiences that inform how they interpret the law and the facts in front of them. ■

LACK OF DIVERSITY ON STATE SUPREME COURTS

Zero Black justices in 25 states

Zero Latino justices in 39 states

Zero Asian American justices in 43 states

Zero Native American justices in 47 states

“State courts are the powerhouses of the judiciary: 95 percent of cases are filed there.”

Alicia Bannon
Director, Judiciary Program



Illustration: Lucy Jones

How to Counter Big Money in Politics

Amplifying small donations combats the influence of megadonors.

The influence of wealthy campaign donors has been growing ever since the Supreme Court’s infamous ruling in *Citizens United v. Federal Election Commission*, which allowed corporations and other outside groups to spend unlimited amounts in our elections. Chisun Lee, director of the Brennan Center’s Elections and Government Program, explains strategies to create a more democratically representative system.

What negative impacts are megadonors having on our democracy?

Just over a decade after the Supreme Court’s *Citizens United* decision effectively deregulated money in politics, the antidemocratic effects of unlimited big money have become painfully clear. The increasing influence of megadonors not only thwarts policy-making to serve the public interest on critical issues like climate change but has also recently worked to undermine the machinery of democracy itself.

How did the imbalance in contributions affect the 2022 midterms?

In the 2022 midterms, small donors to congressional campaigns contributed at record levels. But funds from large donors dwarfed those numbers. This was not the case in 2010, the year of *Citizens United*. Back

then, small donors significantly outspent the 100 biggest donors. But in 2022, the 100 biggest donors gave 60 percent more than all the millions of small donors combined. And just a handful of billionaires generated a whopping 15 percent of all federal election funding.

Megadonors also sponsored election denial candidates in the midterms, in some cases putting them on the political map. Billionaire Peter Thiel spent tens of millions boosting the Senate campaigns of

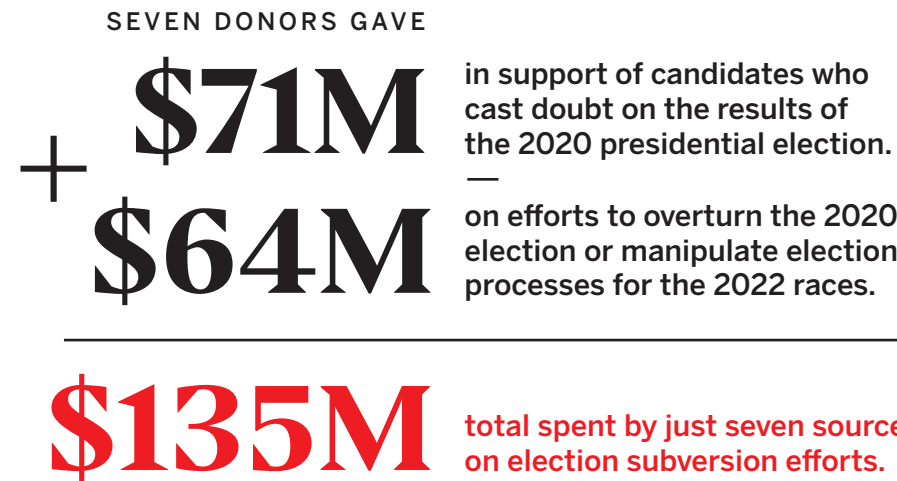


Illustration: Lucy Jones

election deniers J. D. Vance and Blake Masters, both his former business associates. Just seven sources gave \$71 million in support of candidates who cast doubt on the results of the 2020 presidential election. The same sources also spent at least \$64 million on efforts to overturn the 2020 election or manipulate election processes for the 2022 races.

What can be done about this?

Public financing of campaigns, which the Brennan Center has championed through policy design and advocacy for decades, is the most powerful reform available to counter the outsize influence of megadonors. Small donor public financing incentivizes candidates to seek support from everyday citizens, not just a few big donors. When designed well, the policy enables participating candidates to rely principally on constituent support and still raise what they need to compete in the super PAC era. It also helps reduce financial barriers to women, people of color, and other historically disadvantaged groups who seek representation in elected office.

Existing public financing programs show higher levels of participation among small donors — and among more socioeconomically diverse communities — than under traditional campaign finance. Even after *Citizens United*, public financing is a constitutionally valid policy.

Lawmakers also need to close loopholes that allow untraceable “dark money” to proliferate and huge donors to coordinate their spending with candidates. Measures to require transparency and deter corruptive coordination not only remain constitutional after *Citizens United* but are features the Court assumed would keep unlimited spending from undermining democracy. The missing ingredient is the political will to strengthen these measures. We continue to advocate for these reforms at the federal and state levels.

What reforms did we see adopted last year?

Following years of advocacy that we helped lead, New York State’s groundbreaking small donor public financing program launched in November 2022. The program is the strongest legislative response in the nation to *Citizens United*. It will pave the way for New Yorkers to push back against the influence of big money and provide candidates who choose to participate a means to raise competitive sums based on community support. We hope the program will serve as a model for other states and the federal government.

Also in 2022, voters in Oakland, California, and Portland, Maine, approved measures to establish public financing programs. These cities join at least 15 states and 21 municipalities across the country with public financing programs.

Existing programs continue to produce striking results. They boost candidates’ community-based support and enable them to win even in the face of super PAC spending, help individuals from historically disadvantaged groups to compete, and bring new and more diverse donors into the political process.

What’s next for small donor public financing?

Momentum is growing. In addition to New York’s new program, the first cycle of Denver’s program is underway. More public financing programs will soon launch in Baltimore County and Prince George’s County in Maryland.

This growing demand is part of Americans’ broader desire to fix a campaign finance status quo that undermines their voices and their votes. In 2022 the otherwise closely divided electorate in Arizona voted by more than 70 percent to approve a ballot measure to bring greater transparency to election spending.

Should these policies continue to succeed where they have been enacted, there is every reason to expect more localities and states to adopt them. ■



“Small donor public financing incentivizes candidates to seek support from everyday citizens, not just a few big donors.”

Chisun Lee
Director, Elections and Government

Why We Built Brennan en español

Language should not be a barrier to participating in democracy.

In 2022 the Brennan Center launched a Spanish-language website featuring news and analysis related to voting rights, redistricting, misinformation, and other topics especially relevant to Spanish-speaking and bilingual audiences. *Brennan en español* Editor in Chief Mireya Navarro discusses what motivated this new venture, what it has accomplished so far, and how it aims to support Latino media, organizations, and voters moving forward.

What drove the launch of *Brennan en español*? Our Spanish website officially launched in April 2022, but the project really began before the 2020 census and presidential election when we started to translate Brennan Center publications that were particularly relevant to Latino audiences. I was a media strategist at the time, and the initial goal of those translations was to serve the parallel universe of Spanish-language media — the national broadcasters Univision and Telemundo and the network of hundreds of small print and online publications and radio operating at the regional and community levels.

We also wanted to be a resource for ally organizations that serve Spanish speakers. Latino organizations in our voting rights and public policy space have told us we are filling a void because many other groups are unable to offer their resources in two languages.

In what ways are Latinos uniquely impacted by some of the Brennan Center’s core issues? So much of the Brennan Center’s 2020 work particularly affected Latinos — for instance our research and advocacy around keeping the citizenship question off the census form and our efforts to defend voting rights.



Since peddlers of disinformation often target Latino audiences, we developed the “Falsedad–Realidad” series.

It felt urgent to seek ways to directly engage with the communities we fight for and serve as a resource.

More than 40 million people in the United States speak Spanish, including millions who speak only Spanish. When the Brennan Center files a lawsuit over a restrictive voting law in Texas that, among other things, impedes language assistance for voters, that is the population we hope to reach with our translated resources.

Today Latinos are driving the country’s growth, and they make up the largest share of newly registered voters. When young Latino voters and new citizens go to the polls for the first time, they may find it more challenging to navigate election-related information and misinformation because of unfamiliarity with the voting and election system. The Brennan Center can provide them with trustworthy information in an accessible form.



Illustrations: Pablo Medina | Lucy Jones

In 2020, for instance, we worked with the Spanish-language broadcaster Univision to help educate voters about mail voting, laws protecting voters from intimidation at the polls, and what to expect on election night so that any delays in vote counting wouldn’t be misinterpreted as a sign of fraud. In 2022 the Brennan Center and Hispanic Federation cosponsored webinars on how redistricting affected Latino communities in key states. This kind of work — countering attempts to suppress the votes of Latinos, racially profile them, and target them with disinformation — is crucial in the fight to ensure that they can fully participate in our democracy.

How are you ensuring that *Brennan en español* reaches the widest possible audience, and what do you hope to do to broaden its reach in the future?

We focus on translating key Brennan Center written and multimedia content that can be mined by our partners to reach their large audiences. We also create and share original content to make the organization’s work more accessible to those who may be less familiar with our issues. Short-form videos on TikTok are ideal to explain topics such as the role of money and megadonors in the 2022 midterm elections.

We continue to expand partnerships to cosponsor events and reach new audiences. For example, in addition to the panels on redistricting and gerrymandering with the Hispanic Federation, we cosponsored an event on the midterms with the National Association of Hispanic Journalists and contributed content to Factchequeado, a fact-checking service for the Spanish press.

What would you like to see *Brennan en español* accomplish?

We’ve proved ourselves a valuable source for our Latino partners. Next year we’ll continue to grow that



“More than 40 million people in the United States speak Spanish.”

Mireya Navarro
Editor in Chief

network, launching a *Brennan en español* newsletter to target organizations, lawmakers, and government officials, among others, and building our network of Latino allies. We will also use the newsletter to deliver more original content on issues of particular relevance to Latinos, such as the racial gap in voter turnout and how the wave of restrictive voting laws in states like Florida and Texas suppress the Latino vote.

We’ll also expand our efforts to create new kinds of content for new platforms. For instance, we know that Latino communities across the country remain shut out of real political power because of gerrymandered districts, and we’ve translated Brennan Center studies on the subject. But for our website launch, we wanted to do more. We made a humorous video that picked up on the fact that there’s no word in Spanish for gerrymandering. That video went viral, with almost 1 million views.

Latinos are targeted with disinformation in both English and Spanish, so we debuted a home page

feature, “Falsedad–Realidad,” that debunks falsehoods in a format that readers and allies can easily share on social media. And we have a feature called “Los latinos y la democracia,” a kind of Latino power tracker that extracts mentions of Latinos in our experts’ writings to monitor how Latinos are affected, positively or negatively, by current policy on justice, voting rights, and other Brennan Center issues.

We’ll also continue a strategy that worked well in the 2022 midterms: We condensed some of our reports and analyses to 1,000 words to make it easier for news outlets to copublish them and amplify our message. Univision, the *Los Angeles Times*, and *Al Día Dallas* were all takers, helping us spread the word with important media players in national and regional markets. ■

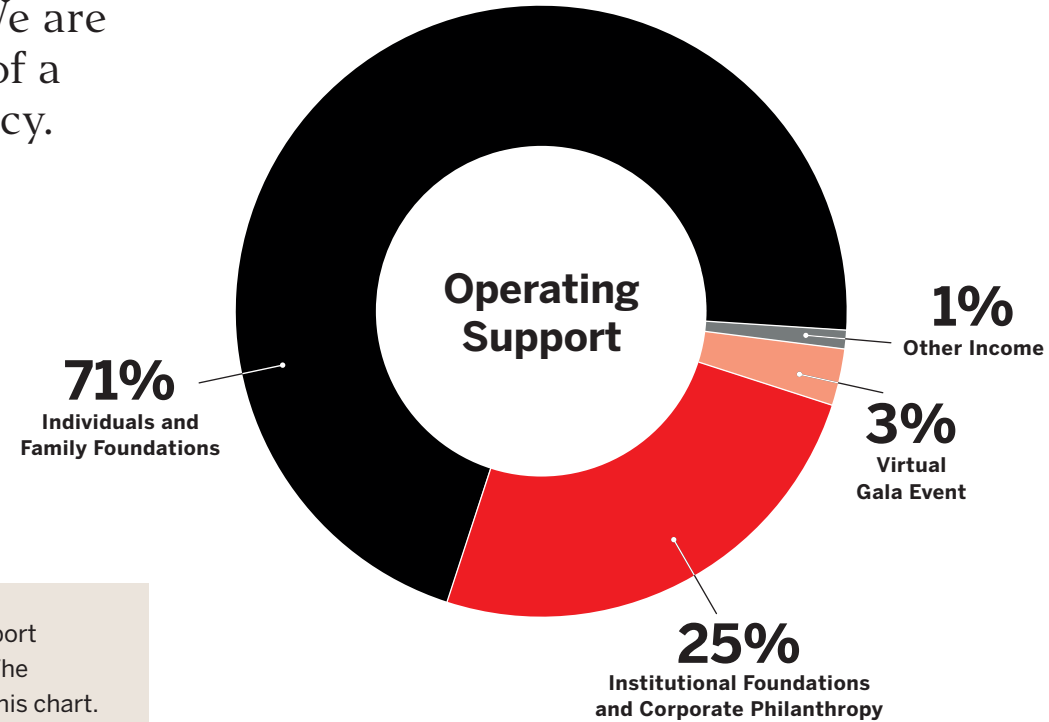
We extend immense gratitude to The Diamonstein-Spielvogel Foundation for its support in helping launch this initiative.

Financials

With American democracy on the line, our supporters stepped up with remarkable generosity in 2022. Thanks to their outpouring of support, we continued our efforts to provide the independent, nonpartisan, and tireless research and advocacy that make us a leading agent of reform. We are grateful and proud to be part of a strong movement for democracy.

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Fiscal Year Ended June 30, 2022

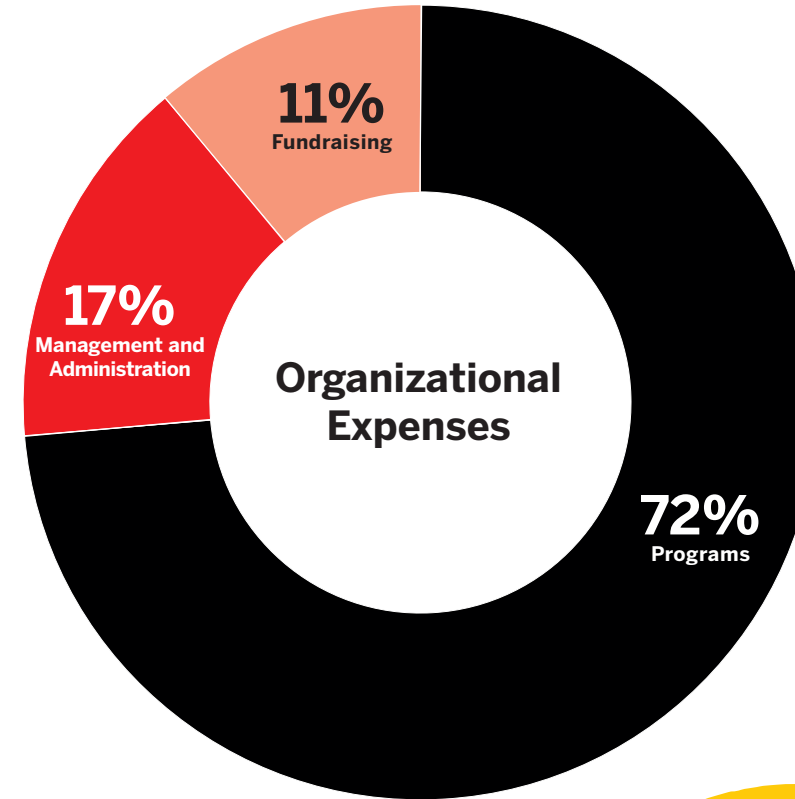
Individuals and Family Foundations	\$27,429,381
Institutional Foundations and Corporate Philanthropy	\$9,463,055
Virtual Gala Event	\$1,148,445
Other Income	\$501,417
Total	\$38,542,298



The Brennan Center is grateful for the pro bono support provided by the law firm community (see page 57). The monetary value of those services is not included in this chart.

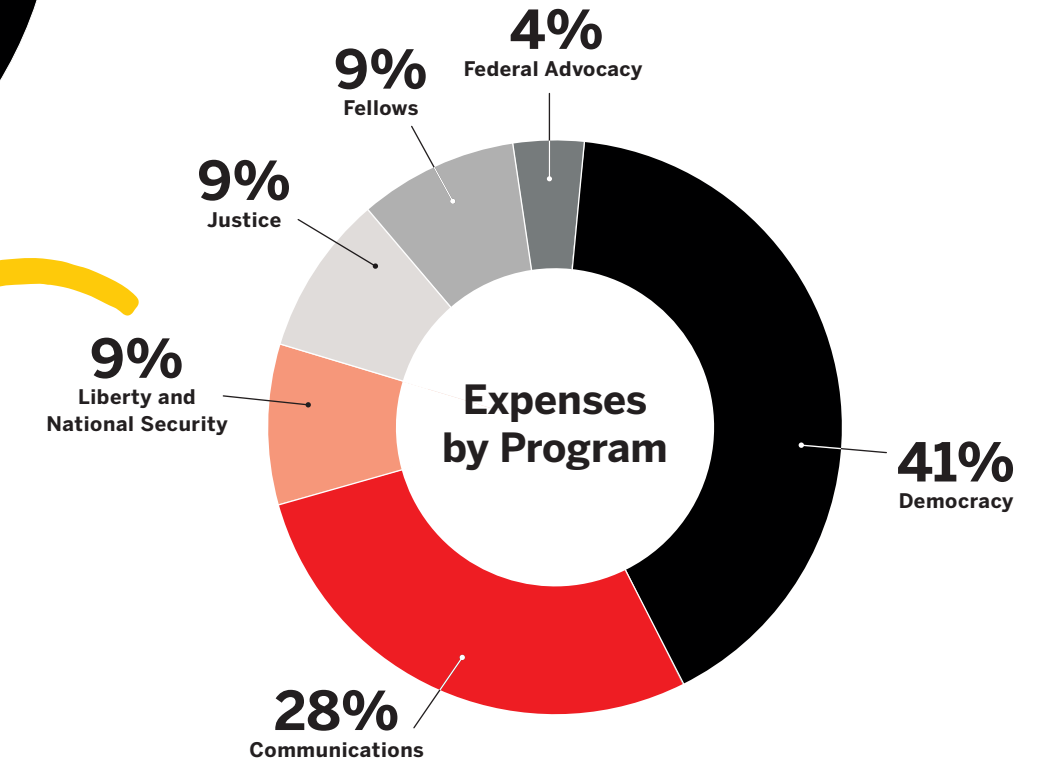
Organizational Expenses
Fiscal Year Ended June 30, 2022

Programs	\$ 23,686,731
Management and Administration	\$ 5,766,742
Fundraising	\$ 3,459,962
Total	\$32,913,435



Expenses by Program
Fiscal Year Ended June 30, 2022

Democracy	\$9,809,741
Communications	\$6,525,629
Liberty and National Security	\$2,178,081
Justice	\$2,101,049
Fellows	\$2,059,714
Federal Advocacy	\$1,012,517
Total	\$23,686,731



Special Funds

The Brennan Center’s critical work has garnered extraordinary support in the past few years. This has enabled three special initiatives designed to ensure a solid, sustainable future for our organization.

Brennan Legacy Fund

Our Board-designated strategic opportunities and reserves fund, the Brennan Legacy Fund, grew to \$100 million by the end of 2021, thanks to special support. We have no formal endowment. The Legacy Fund operates as a quasi-endowment. It is intended to generate income to contribute to our core work. It also protects against unanticipated budget shortfalls or sudden unbudgeted expenses. Still, we aim to raise our operating budget every year. Although affiliated with NYU School of Law, we are financially independent of it, and we receive no government funding.

Brennan Future Fund

This \$25 million fund is intended to be drawn down over a limited period to spur bold new thinking to advance democracy and justice in America.

Inez Milholland Endowment for Democracy

Inez Milholland (1886–1916) was a leader for women’s suffrage, an ardent fighter for equality, and a graduate of NYU School of Law. This \$1.8 million dedicated fund supports the Brennan Center’s Democracy Program.

Planned Giving

A growing cohort of leaders have included the Brennan Center for Justice in their estate planning as members of our Brennan Legacy Circle. For more information about how to contribute to the Brennan Legacy Circle, please contact Paulette Hodge at hodgep@brennan.law.nyu.edu or 646.925.8750.

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The Brennan Center’s work is made possible through the generous financial support of our community of donors and their commitment to an America that is democratic, just, and free. We are proud to have received the highest marks on transparency and effectiveness from Charity Navigator and Candid, and we are pleased to recognize just some of our 39,000 donors for their partnership in 2022.*

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We sincerely regret any omissions or incorrect listings. Please contact us at donations@brennan.law.nyu.edu with updates.

*Funding levels represent annualized giving

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President, Ford Foundation
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“I just listened to a Brennan Center webinar, and once again it made me realize how important this organization’s work is. I don’t have a legal education, so I appreciate that there’s always something I can take away.”

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La democracia depende de todos nosotros

INFORME ANUAL 2022



**BRENNAN
CENTER**
en español

Presentamos a *Brennan en español*

El idioma no debería ser una barrera para participar en nuestra democracia.

En 2022, el Brennan Center lanzó su sitio web en español, donde se publican noticias y análisis en torno al derecho al voto, la distribución de distritos electorales, la propagación de información errónea y otros temas de especial interés para el público hispano y bilingüe. La jefa de redacción de Brennan en español, Mireya Navarro, habla sobre qué motivó esta nueva iniciativa, qué ha logrado hasta el momento y cómo procura dar apoyo a los medios de comunicación, organizaciones y votantes de la comunidad latina.

¿Qué motivó el lanzamiento de *Brennan en español*?

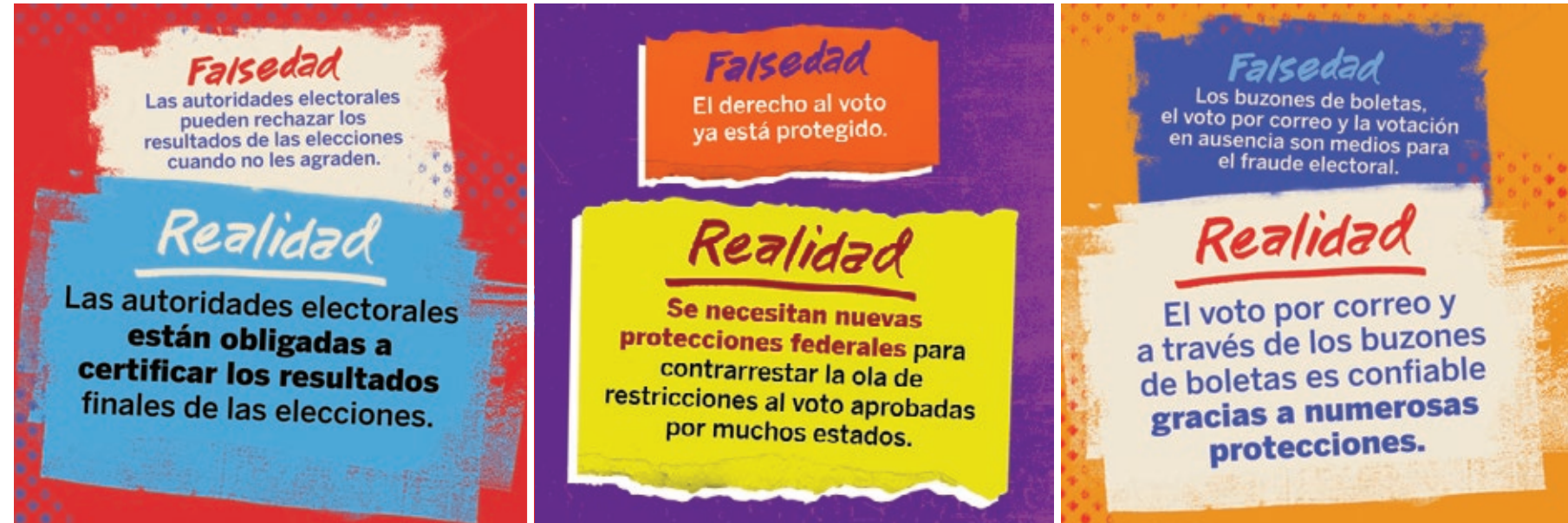
Nuestro sitio web en español se lanzó oficialmente en abril de 2022, pero el proyecto realmente comenzó antes del censo de 2020 y las elecciones presidenciales, cuando empezamos a traducir las publicaciones del Brennan Center que eran de particular interés para el público latino. En ese momento, yo me desempeñaba como estratega de medios, y el objetivo inicial de esas traducciones era el de atender a las necesidades

del universo paralelo de los medios de comunicación en español — las cadenas nacionales de televisión Univision y Telemundo y la red de cientos de estaciones de radio y publicaciones impresas y online más pequeñas — que existen a nivel regional y local.

También queríamos ser un recurso para todas las organizaciones aliadas que atienden a las necesidades de la comunidad hispanohablante. Las organizaciones latinas que forman parte de nuestro trabajo sobre el derecho al voto y las políticas públicas nos han dicho que estamos llenando un vacío, porque muchos otros grupos no pueden ofrecer recursos en los dos idiomas.

¿De qué forma algunos de los temas centrales del Brennan Center afectan directamente a la comunidad latina?

La gran mayoría del trabajo del Brennan Center durante 2020 afectó muy particularmente a la comunidad latina, por ejemplo, nuestras investigaciones y nuestro trabajo de defensa y activismo para no incluir la pregunta de ciudadanía en el formulario de encuesta del censo y sobre el derecho al voto. Sentíamos la urgencia



Como hay campañas de desinformación especialmente dirigidas al público latino, creamos la serie "Falsedad-Realidad".

de buscar formas de hacer participar directamente a las comunidades cuyos derechos defendemos y servirles de recurso.

Más de 40 millones de personas en los Estados Unidos hablan español, y entre ellos, millones hablan solamente español. Cuando el Brennan Center presenta una demanda contra alguna ley electoral restrictiva en Texas que, entre otras cosas, impide la asistencia al votante en otros idiomas, es a esta población a la que esperamos llegar con la traducción de nuestros recursos.

En la actualidad, la comunidad latina está impulsando el crecimiento de la nación y representa la porción más grande de nuevos votantes registrados.

Cuando la comunidad latina joven y los nuevos ciudadanos latinos van a votar por primera vez, se les puede hacer más difícil comprender la información sobre las elecciones y distinguir la información errónea, porque no conocen el sistema electoral y de votación. El Brennan Center puede brindarles información confiable de un modo accesible.

En 2020, por ejemplo, trabajamos con la cadena en español Univision para ayudar a educar al electorado sobre la votación por correo, sobre las leyes que protegen a la ciudadanía de toda intimidación durante la votación y sobre qué esperar cuando se cierra la votación para que cualquier demora en el conteo de votos no se malinterprete como un indicio de fraude.

En 2022, el Brennan Center y la Federación Hispánica organizaron en conjunto varios webinars sobre la forma en que la distribución de distritos electorales afectaba a las comunidades latinas en estados clave. Este tipo de trabajo — para contrarrestar los intentos de suprimir el voto de los latinos, elaborar perfiles raciales y dirigir campañas de desinformación en su contra — es fundamental en nuestra lucha para garantizar su participación plena en nuestra democracia.

¿Cómo hace Brennan en español para asegurarse de llegar al público más amplio posible y qué quiere hacer para ampliar su alcance en el futuro?

Ilustración: Pablo Medina

Nos centramos en traducir el contenido escrito y multimedia clave del Brennan Center para que nuestros aliados puedan difundirlo y así alcanzar a su público más amplio. También creamos y compartimos contenido original para hacer que el trabajo de la organización se vuelva más accesible a otras personas que quizá no conozcan nuestros temas de trabajo. TikTok y su formato de videos cortos son ideales para esto, y hemos experimentado con estos videos para explicar temas como el rol de la financiación y las megadonaciones en las elecciones de 2022.

Continuamos ampliando nuestras alianzas para organizar eventos en conjunto y llegar a un nuevo público. Por ejemplo, además de los paneles que organizamos sobre la distribución de distritos electorales y su manipulación junto con la Federación Hispánica, también organizamos un evento sobre las elecciones legislativas en colaboración con la Asociación Nacional de Periodistas Hispánicos y contribuimos contenido al sitio Factchequeado, un servicio de verificación de información para la prensa en español.

¿Qué le gustaría que lograra Brennan en español?

Hemos demostrado ser una fuente valiosa para nuestros aliados latinos. Para el próximo año, continuaremos trabajando para esa red, lanzaremos un boletín de Brennan en español destinado a organizaciones, legisladores y congresistas y autoridades gubernamentales, entre otros interesados, y afianzaremos nuestra red de aliados latinos. También usaremos el boletín para publicar más contenido original sobre temas de particular interés para la comunidad latina, como la brecha racial en la participación en las elecciones y cómo la ola de leyes electorales restrictivas en estados como Florida y Texas suprime el voto latino.

También multiplicaremos nuestros esfuerzos de crear nuevos tipos de contenido para las nuevas

plataformas. Por ejemplo, sabemos que se sigue excluyendo a muchas comunidades latinas de todo el país de la representación política real, debido a la manipulación de distritos electorales y, por eso, hemos traducido muchos estudios del Brennan Center al respecto. Pero, para el lanzamiento de nuestro sitio web, queríamos hacer más. Creamos un video cómico en el que hablamos sobre cómo en español no hay una sola palabra para traducir "gerrymandering". Ese video se hizo viral, con más de un millón de reproducciones.

La comunidad latina recibe desinformación tanto en inglés como en español; por eso, incluimos una sección en nuestra página de inicio que llamamos "Falsedad-Realidad", donde desacreditamos falsedades en un formato en el que nuestros lectores y aliados lo pueden compartir con facilidad en las redes sociales. También tenemos otra sección llamada "Los latinos y la democracia", una herramienta de seguimiento del poder latino que rastrea toda vez que se menciona a los latinos en las publicaciones de nuestros expertos y monitorea la forma en que las comunidades latinas se ven afectadas de manera positiva o negativa por las políticas actuales del sistema de justicia, del derecho al voto y otros temas del Brennan Center.

Además, continuaremos implementando una estrategia que funcionó bien durante las elecciones de 2022: resumimos algunos de nuestros informes y análisis en artículos de no más de 1,000 palabras, para que sean más fáciles de publicar para los medios de comunicación y así amplificar nuestro mensaje. Univision, Los Angeles Times y Al Día Dallas se sumaron a esta iniciativa y nos ayudaron a difundirlos entre otros medios importantes a nivel nacional y regional. ■

Extendemos nuestro inmenso agradecimiento a The Diamonstein-Spielvogel Foundation por su apoyo para lanzar esta iniciativa.

“Más de 40 millones de personas en los Estados Unidos hablan español.”

Mireya Navarro
jefa de redacción

Lanzamiento de Brennan en español

El personal del Brennan Center for Justice acudió junto a sus aliados a una fiesta de terraza del Hotel Freeland en Manhattan en mayo de 2022 para celebrar el lanzamiento oficial de Brennan en español.



BRENNAN
CENTER
en español



Una diversa representación de la ciudad de Nueva York estuvo presente para apoyar al nuevo sitio web en español.



Frederick Vélez III Burgos e Ingrid Alvarez-DiMarzo de Hispanic Federation.



El presidente y CEO del Brennan Center, Michael Waldman, con algunos miembros del personal.



Controlamos la información errónea

A pesar de los triunfos a favor de la democracia observados en las elecciones legislativas, debemos prepararnos para combatir todos los esfuerzos futuros que buscan debilitar nuestras elecciones.

POR GABRIELLA SANCHEZ

Después de las elecciones de 2020, millones de personas en los Estados Unidos se creyeron y adoptaron la “Gran Mentira” de Trump. La confianza del público en la integridad de nuestras elecciones estaba en riesgo. Como respuesta, el Brennan Center confeccionó un plan multifacético para contrarrestar las mentiras y ayudar a que las elecciones legislativas se desarrollaran con seguridad y sin problemas. Para ello, empleamos innovadores estudios, análisis, recomendaciones de políticas y alianzas estratégicas para convencer y educar al electorado.

Un grupo de expertos del Brennan Center, en colaboración con el instituto estratégico German Marshall Fund of the United States, creó una herramienta interactiva llamada *Midterm Monitor* que monitoreaba las tendencias de la información errónea cuando se divulgaba en las redes sociales. Según se descubrió, las personas que negaban los resultados de las últimas elecciones presidenciales casi siempre seguían el mismo guion: reciclaban las mismas afirmaciones falsas sobre las máquinas de votación, el fraude electoral y la votación por correo; y procuraban “demostrarlas” citando acontecimientos de las últimas noticias, como algunos errores técnicos temporarios el día de las elecciones y las demoras normales en el conteo de votos. Los datos también indicaron que la divulgación de información correcta y oportuna de fuentes confiables es un antídoto poderoso para combatir la información errónea. Estos hallazgos les permitieron al Brennan Center y a sus grupos aliados refutar las teorías conspirativas antes de las elecciones legislativas.

En agosto de 2022, publicamos un informe donde identificamos los vacíos de información del público sobre las elecciones y las formas en que podemos evitar que la información errónea llene esos vacíos,

y divulgamos ese trabajo a nuestra red de funcionarios electorales y a la prensa. También presentamos el informe ante un panel organizado por la Asociación Nacional de Periodistas Hispanos. Un mes antes de las elecciones, publicamos un artículo donde resaltamos siete mitos sobre la votación y los datos que los desacreditan, que fue compartido por el *New York Times*, utilizado por organizaciones aliadas y traducido al español en Univision para llegar al público latino, que tiene un mayor riesgo de recibir información errónea.

A medida que se acercaba el día de las elecciones, trabajamos para llegar al electorado latino en

Arizona, Florida, Georgia y Texas, quienes tuvieron una exposición significativa a la propagación de información errónea. Analizamos muchísimas publicaciones de redes sociales para señalar las falsedades con las que se encontraban estas poblaciones y luego realizamos pruebas en inglés y en español para determinar qué tipo de contramensajes podría aumentar su confianza en las elecciones con la mayor eficiencia. Utilizamos a influencers que tenían entre 20,000 y 100,000 seguidores en Instagram, Facebook, TikTok y otras plataformas para diseñar una campaña de redes sociales donde pudiéramos compartir nuestro mensaje.

La campaña generó más de 1.2 millones de impresiones entre la audiencia a la que nos dirigíamos. Aquellas personas que veían una publicación de gente en la que confiaban dijeron que ahora era un 27 por ciento más probable que fueran a votar, lo cual produjo un aumento de al menos el 5 por ciento en el número de residentes que votó, en comparación con la cantidad de personas que tenían planeado votar al principio.

El éxito de esta campaña de contramensajes es un indicio alentador en la lucha contra la información errónea. Pero quizás el motivo de optimismo más importante es el resultado de las elecciones legislati-

vas. Las elecciones se desarrollaron con seguridad, y los actos de violencia que anticipábamos no sucedieron. Muchos candidatos que negaban las últimas elecciones presidenciales fueron derrotados, en especial las personas que se presentaron para ocupar cargos de control de la administración electoral.

Sin embargo, la información errónea no va a desaparecer. La inteligencia artificial y el aprendizaje automático van a automatizar la creación de campañas de información errónea y dificultar su monitoreo y seguimiento. La precisión cada vez más minuciosa con la que se dirige la diseminación de información errónea hace que las personas se vuelvan más vulnerables a esta táctica. Los datos de varias encuestas demuestran, sin lugar a duda, que la información errónea está erosionando la confianza del público en el sistema. Aproximadamente dos de cada tres personas en los Estados Unidos creen que nuestra democracia está en peligro de fracasar. Y debido a la información errónea que surge sobre la confiabilidad de la seguridad de las elecciones, el 26 por ciento de las personas no cree que su voto “realmente cuente”.

Combatir estas tendencias será uno de los retos más grandes que enfrentarán el Brennan Center y nuestro sistema democrático durante los próximos años. Nuestro trabajo se centrará en la diseminación de mensajes que permitan romper y contrarrestar la proliferación de falsedades mediante el uso de técnicas innovadoras de encuestas y escucha de redes sociales. También continuaremos exponiendo el rol que desempeñan las redes sociales y explicaremos la manera en que, si se imponen reglas de transparencia en estas plataformas, se podría echar luz sobre la información errónea. ■

Gabriella Sanchez es autora y editora del Departamento de Comunicaciones y Estrategia.

Protejamos a las autoridades electorales

El Brennan Center lideró un plan para garantizar la seguridad de las autoridades electorales antes de las elecciones de 2022.

POR BRIAN PALMER

Garantizar la seguridad de las autoridades electorales fue una de las principales prioridades del Brennan Center de cara a las elecciones legislativas de 2022. Los funcionarios públicos que se aseguran de que nuestra democracia funcione enfrentaron un diluvio de amenazas específicas y aterradoras durante el ciclo electoral de 2020, amenazas que, en algunos casos, les obligaron, junto con sus familias, a abandonar sus hogares. De acuerdo con una encuesta del Brennan Center de 2021, un tercio de los funcionarios electorales siente inseguridad a causa de su puesto de trabajo, y casi la quinta parte menciona las amenazas contra su vida como una preocupación laboral.

El Brennan Center ha formado un equipo de trabajo con ex altos funcionarios electorales para fortalecer a esta comunidad. Entre ellos, la abogada experta Elizabeth Howard, que fue máxima autoridad electoral en Virginia; Natalie Tennant, que fue secretaria de esta-

do de West Virginia; y la nueva integrante del equipo: Veronica DeGraffenreid, ex secretaria de estado de Pensilvania y directora de elecciones durante años de Carolina del Norte. Todas ellas trabajan con Lawrence Norden, director experto de nuestro Programa sobre Elecciones y Gobierno.

Al fin y al cabo, en 2022 las autoridades electorales de los dos partidos políticos querían principalmente lo mismo: la ayuda de las fuerzas policiales y judiciales. El Brennan Center trabaja junto con la policía y las fiscalías para formular reformas de justicia penal. Entonces, recurrimos a nuestra red de aliados y coordinamos la colaboración de la organización conservadora R Street. Juntos, creamos una nueva fuerza poderosa: el Comité para Elecciones Seguras y Sin Riesgos.

“Reunimos a las fuerzas policiales y judiciales junto con las autoridades electorales de todo el país para identificar los obstáculos que enfrentamos y encontrar soluciones,” señala Howard. “Reunir a este grupo diverso de la comunidad nos permitió diseñar guías y

recursos prácticos que ayudaron a las comunidades a garantizar la seguridad tanto de nuestras autoridades y funcionarios electorales como del público”. Los administradores electorales, la policía y las fiscalías asistieron a reuniones organizadas por el Brennan Center y nuestros aliados de Microsoft en Orlando y Washington, D.C.

El comité elaboró un método de cinco pasos para lograr elecciones más seguras, en el que el primero era simple pero fundamental: conectarse. En muchas localidades, el simple hecho de identificar a la persona de contacto indicada en cada comunidad y reunirse con otras partes interesadas en el área fue una primera medida importante. Una vez lograda esa conexión, se alentó a funcionarios electorales y fuerzas policiales y judiciales a compartir sus experiencias y toda información importante sobre la administración electoral de su jurisdicción, concertar qué funciones y responsabilidades tendrá cada una de las partes en la iniciativa, planificar una respuesta coordinada ante posibles incidentes y practicar esa respuesta. El comité también formuló guías de referencia para cada estado, de modo que todas las partes comprendieran las leyes que protegían a los funcionarios electorales y al electorado.

Los integrantes del comité acudieron a los medios de comunicación para diseminar este mensaje y recibieron cobertura en numerosos medios nacionales y locales, desde Reuters hasta Good Morning America y la revista especializada Sheriff and Deputy. Howard realizó una presentación ante el Comité de Seguridad Nacional del Congreso sobre el peligro que le significan a nuestra democracia las amenazas contra funcionarios electorales y el rol que cumple la información falsa sobre la administración electoral a la hora de avivar estas amenazas.

El Brennan Center utilizó sus poderosas plataformas y métodos de difusión pública para asegurarle al

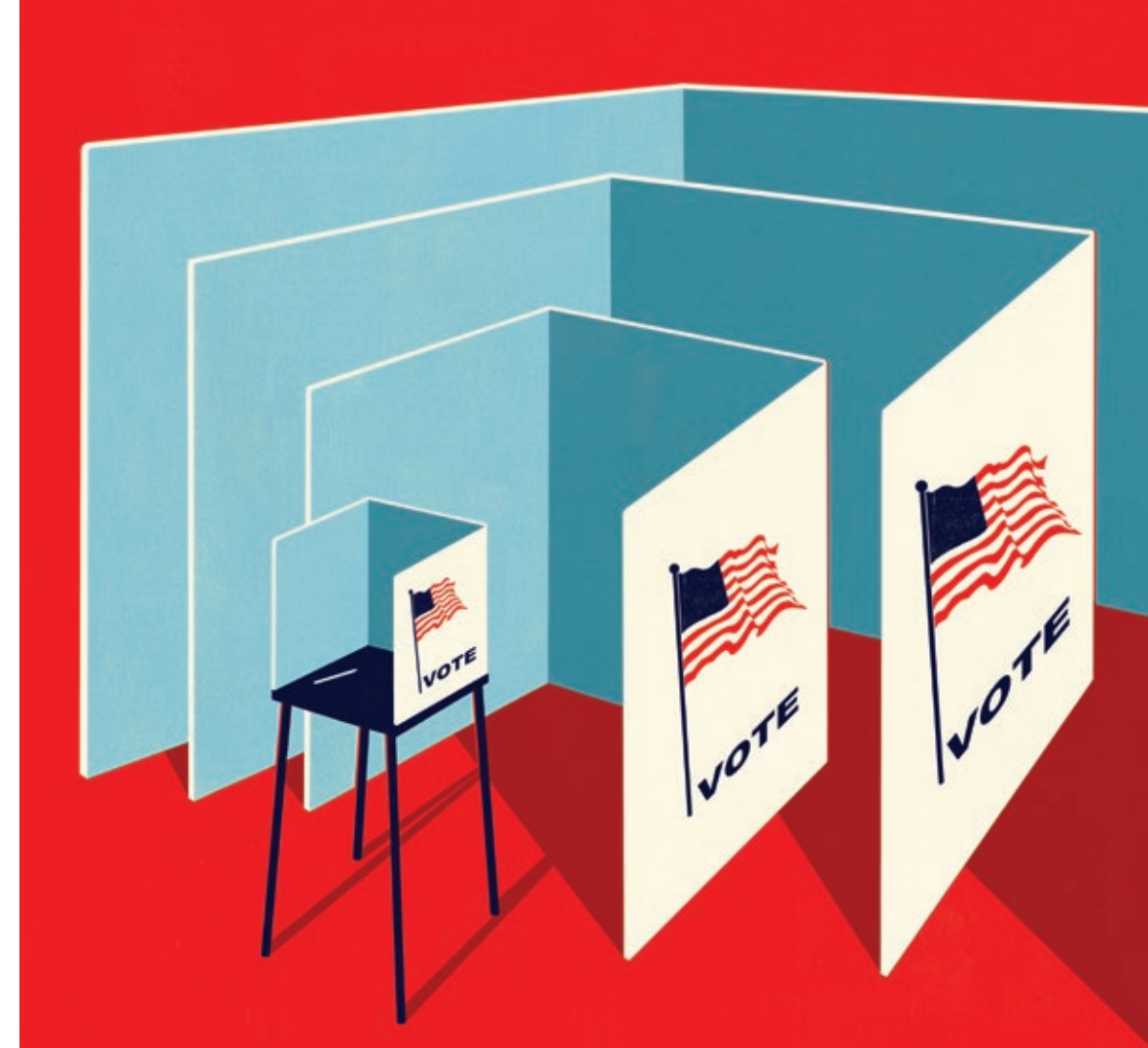


Ilustración: Dan Bejar

electorado de que nuestras democracias son libres, seguras y justas, y recalcar las medidas de seguridad existentes en las elecciones que, según se demostró, son las más efectivas. Los alguaciles Justin Smith del condado de Larimer, Colorado, y Peter J. Koutoujian de Middlesex, Massachusetts, redactaron juntos un artículo de opinión en el que instaban a sus colegas a ayudar a garantizar la seguridad de nuestros funcionarios electorales y de todo el electorado. Estos mensajes han demostrado ser efectivos a la hora de convencer a las personas escépticas de nuestras elecciones. En octubre, el Brennan Center y el institu-

to R Street publicaron una encuesta, llevada a cabo por Benenson Strategy Group, que demostraba que la confianza en las elecciones entre personas republicanas aumentaba 21 puntos porcentuales cuando se les informaba sobre las protecciones que existen en nuestro sistema electoral. Este tipo de mensajes ayudó a inmunizar a la ciudadanía contra la información errónea y debilitó el apoyo que se tenía a posibles reacciones violentas contra las elecciones de 2022. ■

Brian Palmer es director editorial en el Departamento de Comunicaciones y Estrategia.

LOS PASOS PARA ELECCIONES MÁS SEGURAS

UNO

Conectarse
con las autoridades policiales y judiciales

DOS

Compartir
las experiencias en torno a la intimidación contra funcionarios electorales

TRES

Acordar
qué funciones y responsabilidades tendrá cada uno

CUATRO

Planificar
una respuesta coordinada

CINCO

Practicar
esa respuesta ante posibles incidentes

“

**Aquellas personas
que desean restringir
los reclamos de derechos
según los valores de 1789...
cierran los ojos ante
el progreso social.**

MAGISTRADO WILLIAM BRENNAN